

Re MUGISHA

[Rwanda URUKIKO RW'IKIRENGA – RS/INCONST/SPEC00002/2018/SC (Rugege, P.J., Kayitesi Z, Mutashya, Kayitesi R na Cyanzayire, J.) 24 Mata 2019]

Itegeko Nshinga – Ibikorwa bibangamira inyungu rusange – Umushingamategeko ashobora gufata ibikorwa bimwe akagenda ko ari icyaha bihanishwa igihano cy'igifungo kabone nubwo byaba bifitanye isano n'amasezerano iyo bibangamira inyungu rusange kandi ibyo ntibibuza abo byangirije kuba bakoresha n'inzira y'imbenezamubano baregera indishyi cyangwa iyubahirizwa ry'amasezerano.

Itegeko Nshinga – Ingaruka z'igihano cy'igifungo ku muryango – Ingaruka z'igihano cy'igifungo ku muryango ntizikwiye gushingirwaho havanwaho ingingo ziteganywa icyo gihano, kuko igihano cy'igifungo gitangwa hagamijwe gutanga urugero rutuma abantu batishora mu byaha, kigamije guhana, kugorora no kwigisha.

Itegeko Nshinga – Ubwisanzure bw'umuryango – Ubwisanzure bw'umuryango ntabwo ari ugukora icyo buri wese ashaka ahubwo n'umudendeko n'umutekano w'abagize umuryango kandi ibyo tibishobora kugerwaho n'umuryango uhora mu makimbirane no kutabana neza bikunze kuba mu ngo zirimo ibibazo by'ubusambanyi, ubushyamba cyangwa guta urugo – Itegeko nshinga rya Repubulika y'u Rwanda ryo mu 2003 ryavugururwe mu 2015, ingingo ya 18.

Itegeko Nshinga – Ubwisanzure bw'itangazamakuru n'ubwo kugaragaza ibitekerezo – Mu gukoresha ubwisanzure bw'itangazamakuru n'ubwo kugaragaza ibitekerezo, umuntu ashobora gutanga ibitekerezo ku mihango y'idini, ibimenyetso, n'ibikoresho by'imihango yaryo ndetse anafite uburenganzira bwo gushyamba, kubona no gukwirakwiza amakuru n'ibitekerezo mu ruhame birebana n'imihango y'idini, ibimenyetso, n'ibikoresho by'imihango y'idini akaba yanabinenga, aya kudakora ibibujijwe n'ingingo ya 38 y'Itegeko Nshinga.

Itegeko Nshinga – Kureka ikirego kirebana n'icyaha cy'ubusambanyi – Uwahemukiwe ashobora gusaba guhagarika ikurikirana ry'urubanza, aho rwaba rugeze hose, iyo yisubiyeho akareka ikirego cye – Kureka urubanza cyangwa irangiza ryarwo bigira ingaruka no kuwakoranye icyaha n'uregwa.

Itegeko Nshinga – Gutandukanya abantu – Gutandukanya abantu ubwabyo ntabwo ari ivangura cyangwa kutashyeshya abantu imbere y'amategeko, bishobora gukorwa iyo hari impamvu igaragara irengera abari mu cyiciro cy'abanyanteye nke, iyo mpamvu igomba kuba igaragarira buri wese (objective justification or legitimate objective) kandi bikaba biri mu rugero urebye uburyo bwakoreshejwe mu kugera ku ntego cyangwa ikigamijwe.

Itegeko Nshinga – Gutanga ibitekerezo no gutangaza amakuru ku bikorwa n'abayobozi – Kugaragaza ibitekerezo no gutangaza amakuru ku bikorwa n'abayobozi, bushimangira ihame rya demokarasi ryo gukorera mu mucyo no kubazwa inshingano ku byo abayobozi bakorerabaturage

Itegeko Nshinga – Ubwisanzure bw'itangazamakuru n'ubwo kugaragaza ibitekerezo – Amakuru cyangwa ibitekerezo byemewe gutangazwa ntibigomba gusa kuba ari ibishimisha ubuyobozi cyangwa bidafite abo bibangamiye, ahubwo ibitanogeye ubutegetsi na bamwe mu baturage bikwiye kwemerwa kuko iyo ibitekerezo by'ingeri nyinshi, ubworoherane no gutekereza byagutse bidahari, demokarasi iba idashoboka.

Incamake y'ikibazo: Nyuma y'uko hatangajwe mu Igazeti ya Leta Itegeko N°68/2018 ryo ku wa 30/08/2018 riteganywa ibyaha n'ibihano muri rusange, Me Mugisha yatanze ikirego mu Rukiko rw'Ikirenga asaba urwo Rukiko kwemeza ko ingingo ya 233, 236, 136, 138, 154 n'ya 139 zirimo tegeko zinyuranyije n'Itegeko Nshinga rya Repubulika y'u Rwanda, mu ngingo zaryo za 15, 18 na 38. Akomeza avugira ko izo ngingo zisabirwa kuvanwaho ziri mu byiciro bibiri: icyiciro cya mbere kigizwe n'ingingo eshatu :iya 154, 233 n'ya 236 naho icyiciro cya kabiri nacyo kikaba kigizwe n'ingingo eshatu iya 136,138 n'ya 139.

Intumwa ya Leta yatanze inzitizi yo kutakira ikirego ku mpamvu z'uko urega nta nyungu afite zo kugitanga. Ku wa 18/03/2018, Urukiko rwafashe icyemezo kuri iyo nzitizi, rwemeza ko afite inyungu yo gutanga ikirego gisaba kwemeza ko ingingo z'itegeko zinyuranyije n'Itegeko Nshinga kandi kubera uburemere bw'ibibazo biri muri uru rubanza Urukiko rwasabye ko abantu n'ibigo cyangwa imiryango itegamiye kuri Leta bifuzaga gutanga ibitekerezo muri uru rubanza nk'inshuti z'urukiko (Amicus Curiae) kandi babifitiye ubumenyi babisaba, mubabisabye Urukiko rwemeza ko ARJ (Ihuriro ry'Abanyamakuru n'abandi bakora mu itangazamakuru mu Rwanda), Impuzamiryango PRO-FEMMES / TWESE HAMWE n' Ishuli ry'Amategeko rya Kaminuza y'u Rwanda (School of Law), aribo bagomba kwitaba urukiko mu iburanisha ry'uru rubanza nk'inshuti z'urukiko.

Ku ngingo urega yashyize mu cyiciro cya kabiri arizo iya 136 iteganya ko umuntu wese washyingiwe ukorana imibonano mpuzabitsina n'uwo batashyingiranywe, aba akoze icyaha ,138 iteganya ko umuntu ubana nk'umugabo n'umugore n'uwo batashyingiranywe umwe muri bo cyangwa bombi bafite uwo bashyingiranywe, aba akoze icyaha n'iya 139 iteganya ko umwe mu bashyingiranywe uta urugo rwe mu gihe kirenze amezi abiri (2) nta mpamvu zikomeye akihunza ibyo ategetswe, aba akoze icyaha , Urega avuga ko izo ingingo zinyuranyije n'ingingo ya 18 y'Itegeko Nshinga rya Repubulika y'u Rwanda, kuko ziteganya igihano cy'igifungo kuri umwe mu bashakanye, wahamijwe icyaha cy'ubusambanyi, ubushoreke cyangwa se guta urugo, kandi umuryango udashobora kurengerwa cyangwa ngo ugire ubwisanzure, umwe mu bawugize afunze ,cyane cyane ko ingingo ya 18 y'Itegeko Nshinga iha Leta inshingano yo gushyiraho amategeko n'inzego bikwiye mu kurengera umuryango, ariyo mpamvu basanga ibikorwa by'ubusambanyi, ubushoreke no guta urugo kuba byarashyizwe mu mategeko ahana atari uburyo bukwiye mu rwego rwo kurengera umuryango. Akomeza avuga ko ibiteganywa muri izo ngingo byagombye kuba mu mategeko mbonezamubano, kuko bishingiye ku masezerano y'abantu babiri hagati yabo.

Intumwa ya Leta yo ivuga ko hari ibikorwa byinshi bifatwa ko ari ibyaha ku isi kandi bishingiye ku masezerano kandi ko ibyaha by'ubusambanyi, ubushoreke no guta urugo ari ibikorwa bibi bishobora kugira ingaruka kuri rubanda nyamwinshi, ku gaciro ka muntu, ku ndangagaciro z'igihugu n'abenegihugu bagenderaho akaba ari imyitwarire itandukanye n'imyitwarire myiza, n'imyifatire mbonezabupfura bitesha umuntu agaciro, ariyo mpamvu Leta iba igomba kubyinjiramo mu rwego rwo kubihana no kubikumira.

PRO-FEMMES / TWESE HAMWE ivuga ko izo ingingo zitakurwaho kuko byatuma ubusambanyi, ubushoreke no guta urugo bifatwa nkaho byemewe kandi byagira ingaruka zikomeye zisenya umuryango nyarwanda ku buryo nta muryango utekanye wakongera kubaho, kuko uba wavukijwe umudendezo kandi ingingo ya 18 y'Itegeko Nshinga iha Leta inshingano yo kurengera umuryango kuko ariwo shingiro kamere ry'imbaga y'abanyarwanda.

Ishuli ry'amategeko rya Kaminuza y'u Rwanda rivuga ko kuba ishyingirwa rishingiye ku bushake bukomoka ku rukundo, bugamije gushinga urugo, mu gihe ubwo bushake cyangwa urukundo bitagihari kugeza aho umwe mu bashakanye afata icyemezo cyo kutubahiriza isezerano yahaye mugenzi we, inkiko nshinjabyaha atarizo zagakwiye gukemura icyo kibazo ahubwo ko cyagakemuwe n'inkiko mbonezamubano kuko ari nazo zahawe inshingano yo kuburanisha cyangwa gukemura ibibazo by'umuryango kandi ko guteganya igihano cy'igifungo ku busambanyi, ubushoreke no guta urugo, bituma abagize umuryango batumvikaka, ntibite ku nshingano zo kurera abana no kubishyurira amashuri, ku buryo bigera aho uwahemukiwe ahatirwa gutanga imbabazi.

Kubirebana n'icyiciro kigizwe n'ingingo ya 154, 233 na 236, ingingo ya 154, iteganya ko umuntu wese usebya mu ruhamu imihango y'idini, ibimenyetso byaryo n'ibikoresho by'imihango yaryo akoresheje ibikorwa, amagambo, ibimenyetso, inyandiko, amarenga cyangwa ibikangisho abigiriye aho imihango y'idini igenewe gukorerwa cyangwa isanzwe ikorerwa, aba akoze icyaha. Urega avuga ko ibiteganywa n'iyi ngingo bidasobanutse neza ku buryo ishobora gukoreshwa nabi mu gukurikirana uwakoze ibyo bikorwa kandi ko bibangamira uburenganzira bw'itangazamakuru no kugaragaza ibitekerezo no gutanga ibitekerezo ku madini n'imikorere yayo kuko abanyamakuru batinya kugira icyo bavugaga ku madini kugirango badakurikiranwa.

Kuri iyo ingingo, Intumwa ya Leta ivuga ko kuba bimwe mu biri muri iyo ngingo bidasobanutse atari impamvu yatuma itegeko cyangwa iyo ngingo yose ivaho, ahubwo ko ryasobanurwa. Naho Ihuriro ry'Abanyamakuru n'abandi bakora mu itangazamakuru mu Rwanda (ARJ) ivuga ko iyo ingingo yirengagiza uburenganzira bw'abantu ku myemerere y'abantu, ku buryo ibyo iteganya byatuma abantu badatanga ibitekerezo ku myemerere y'abantu ahubwo ko umuntu cyangwa umuryango ufite ubuzima gatozi, wakumva ko itangazamakuru cyangwa umunyamakuru yamuharabitse, yakwiyambaza inzira y'imbenezamubano kugira ngo arenganurwe. Ishuli ryigisha amategeko muri Kaminuza y'u Rwanda ryo rivuga ko iyo ngingo idasobanura idini icyo aricyo ndetse n'aho imihango y'idini igenewe gukorerwa cyangwa isanzwe ikorerwa aho ariho, bityo abantu bakaba barengana mu gihe iyi ngingo yaguma uko iri ubu, kuko hagombye gusobanurwa icyo idini aricyo kugira ngo n'imihango yaryo ibe yasobanuka.

Ku ingingo ya 233 iteganya icyaha cyo gukoza isoni umwe mu bagize Inteko Ishinga Amategeko, mu bagize Guverinoma, abashinzwe umutekano cyangwa undi wese ushinze umurimo rusange w'igihugu, urega avuga ko inyuranyije n'Itegeko Nshinga mu ngingo zaryo za 15 na 38 kuko ivangura harebwe abo irengera kandi ko ibangamiye ubwisanzure bwo gutangaza amakuru, kuyatara no gutanga ibitekerezo.

Intumwa ya Leta ivuga ko ingingo ya 15 y'Itegeko Nshinga ivuga kureshya imbere y'amategeko no kurengerwa n'amategeko mu buryo bungana, bivuze ko abantu bagomba gufatwa kimwe iyo bari mu bihe bimwe, ariyo mpamvu hari abarengerwa kubera ko bari mu mirimo runaka cyangwa inzego runaka, cyane cyane ko ikirengerwa ari umurimo cyangwa urwego atari umuntu, kuko iyo avuye kuri uwo murimo, uwugiyeho arengerwa nk'uwari uwuriho.

Ihuriro ry'Abanyamakuru n'abandi bakora mu itangazamakuru mu Rwanda (ARJ) ryo rivuga ko iyo ngingo ibuza ubwisanzure bw'Itangazamakuru n'ubwo gutanga ibitekerezo kubera ko ituma umunyamakuru wakwandika inkuru ku miyoborere itari myiza ku muyobozi cyangwa undi wese ushinze umurimo rusange byakwitwaga icyaha kandi umuntu ufite umurimo rusange atareka kwandikwaho niba ntacyo yikeka, akomeza avuga ko iyo ingingo ituma abantu baba bakekwaho imyitwarire mibi idakwiye kuranga abakozi ba Leta cyangwa abashinzwe umurimo rusange, batagira icyo bavugwaho cyangwa bandikwaho. Naho Ishuli ryigisha amategeko muri Kaminuza y'u Rwanda rivuga ko iyo ngingo idasobanura itandukaniro hagati y'igihe umwe mu bavugwa muri iyo ngingo akora umurimo rusange n'igihe biturutse kuri uwo murimo, kandi idasobanura niba abarindwa muri iyo ngingo ari abakozi ba Leta bose aho bava bakagera, ndetse ko itanasobanura icyo gukoza isoni bisobanuye. Ikavuga nanone ko iyi ngingo irengera igice kimwe cy'abantu bakora mu nzego za Leta, ibyo bikaba binyuranye n'ihame ry'uko abantu bose bangana imbere y'amategeko kandi itegeko rigomba kubarengera kimwe.

Naho kubirebana n'ingingo ya 236 igateganya ko umuntu wese utuka cyangwa usebya Perezida wa Repubulika, aba akoze icyaha, Urega avuga ko icyo cyaha gishobora kuba urwitwazo mu kubangamira ubwisanzure bw'abanyamakuru, cyane cyane ko icyaha cyo gusebanya kidasobanutse neza, bityo iyo ngingo inyuranye n'ingingo ya 15 y'Itegeko Nshinga kuko itarengera abantu mu buryo bumwe kuko ihana abatuka cyangwa bagasebya umuntu umwe gusa.

Intumwa ya Leta ivuga ko ubwisanzure bw'umunyamakuru bugomba kugarukira aho icyubahiro cy'umuyobozi gitangirira, n'umutekano we, kandi ko iyo ingingo itabuza kwandika kuri Perezida wa Repubulika ahubwo ibuza kumusebya cyangwa kumutuka.

Ihuriro ry'Abanyamakuru n'abandi bakora mu itangazamakuru mu Rwanda (ARJ) avuga ko nayo yemera ko Perezida wa Repubulika kubera inshingano agira agomba kugira imyitwarire irenze abantu bose, ariko ko icyamwandikwaho kitagombye kuba icyaha. Naho Ishuli ryigisha amategeko muri Kaminuza y'u Rwanda rivuga iyo ibiyivugwamo bihujwe n'ibiteganywa n'ingingo ya 161 ihana icyaha cyo gutukana, usanga icyaha cyo gutukana gihanwa iyo gikozwe mu ruhamwe, mu gihe ku birebana n'ingingo ya 236 yumvikanisha ko aho icyo cyaha cyakorerwa hose, bivuze ko niyo abantu 2 baba biherereye, umwe atukana n'undi, yamubeshyera ko yakoze icyo cyaha akagikurikiranwaho. Mugusozza rivuga ko kuba icyaha cyo gusebya cyaravanywe mu mategeko ahana ku bandi bantu basanga impamvu zatumye icyo cyaha gikurwaho ku bantu bose, zakoresheye no kuri Perezida wa Repubulika.

Incamake y'icyemezo: 1. Bitewe n'ikigamijwe, Umushingamategeko ashobora gufata ibikorwa bimwe akagenda ko ari icyaha kandi ko bihanishwa igifungo kabone nubwo byaba bifitanye isano n'amasezerano kandi ibyo ntibubuza abo byangirije kuba bakoresha n'inzira y'imbenezamubano baregera indishyi cyangwa iyubahirizwa ry'amasezerano, bityo kuba icyaha cy'ubusambanyi, ubushoreke, no guta urugo byaba bishingiye ku masezerano, ntabwo ari impamvu yatuma bidakurikiranwa ngo bihanwe nk'ibyaha.

2. Ingaruka z'igihano cy'igifungo ku muryango ntizikwiye gushingirwaho havanwaho ingingo ziteganywa icyo gihano, kuko igihano cy'igifungo gitangwa hagamijwe gutanga urugero rutuma abantu batishora mu byaha, kigamije guhana, kugorora no kwigisha. Kandi ibihano kuri ibi byaha biri mu rugero, kuko bidakabije mu buremere ugereranije n'ibyaha bireba (proportionality).

3. Ubwisanzure bw'umuryango ntabwo ari ugukora icyo buri wese ashaka ahubwo n'umudendezi n'umutekano w'abagize umuryango kandi ibyo ntibishobora kugerwaho n'umuryango uhora mu makimbirane no kutabana neza bikunze kuba mu ngo zirimwo ibibazo by'ubusambanyi, ubushoreke cyangwa guta urugo, bityo guhana ibi byaha ntabwo ari ugusenywa no kubangamira ubwisanzure bw'umuryango ahubwo n'ugukumira icyabuhungabanya.

4. Uwahemukiwe ashobora gusaba guhagarika ikurikirana ry'urubanza, aho rwaba rugeze hose, iyo yisubiyeho akareka ikirego cye kandi kureka urubanza cyangwa irangiza ryarwo bigira ingaruka no kuwakoranye icyaha n'uregwa.

5. Mu gukoresha ubwisanzure bw'itangazamakuru n'ubwo kugaragaza ibitekerezo, umuntu ashobora gutanga ibitekerezo ku mihango y'idini, ibimenyetso, n'ibikoresho by'imihango yaryo ndetse anafite uburenganzira bwo gushaka, kubona no gukwirakwiza amakuru n'ibitekerezo mu ruhame birebana n'imihango y'idini, ibimenyetso, n'ibikoresho by'imihango y'idini akaba yanabinenga, apfa kudakora ibibujijwe n'ingingo ya 38 y'Itegeko Nshinga

6. Gutandukanya abantu ubwabyo ntabwo ari ivangura cyangwa kutareshyeshya abantu imbere y'amategeko, bishobora gukorwa iyo hari impamvu igaragara irengera abari mu cyiciro cy'abanyantegu nke, iyo mpamvu igomba kuba igaragarira buri wese (objective justification or legitimate objective) kandi bikaba biri mu rugero urebye uburyo bwakoreshejwe mu kugera ku ntego cyangwa ikigamijwe.

7. Kugaragaza ibitekerezo no gutangaza amakuru ku bikorwa n'abayobozi, bishimangira ihame rya demokarasi ryo gukorera mu mucyo no kubazwa inshingano ku byo abayobozi bakorera abaturage.

8. Amakuru cyangwa ibitekerezo byemewe gutangazwa ntibigomba gusa kuba ari ibishimisha ubuyobozi cyangwa bidafite abo bibangamiye, ahubwo ibitanogeye ubutegetsu na bamwe mu baturage bikwiye kwemerwa kuko iyo ibitekerezo by'ingeri nyinshi, ubworoherane no gutekereza byagutse bidahari, demokarasi iba idashoboka.

Ikirego gifite ishingiro kuri bimwe;

Igika cya gatatu cy'ingingo ya 136 cyandikwa mu buryo bukurikira: "Uwahemukiwe ashobora gusaba guhagarika ikurikirana ry'urubanza, aho rwaba rugeze hose, iyo yisubiyeho akareka ikirego cye. Kureka urubanza cyangwa irangiza ryarwo bigira ingaruka no kuwakoranye icyaha n'uregwa"

Ingingo ya 136, igika cya mbere, icya kabiri n'icya gatatu y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganywa ibyaha n'ibihano muri rusange ntinyuranyije n'ingingo ya 18 y'Itegeko Nshinga;

Igika cya kane n'icya gatanu by'ingingo ya 136 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganywa ibyaha n'ibihano muri rusange bivanyweho;

Ingingo ya 138, n'ya 139 z'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganywa ibyaha n'ibihano muri rusange ntizinyuranyije n'ingingo ya 18 y'Itegeko Nshinga;

Ingingo ya 154 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganywa ibyaha n'ibihano muri rusange, inyuranije n'ingingo ya 38 y'Itegeko Nshinga, bityo ikaba ivanyweho;

Ingingo ya 233 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganywa ibyaha n'ibihano muri rusange inyuranije n'ingingo ya 15 n'ya 38 y'Itegeko Nshinga, bityo iyo ngingo ikaba ivanyweho;

Ingingo ya 236 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange ntinyuranyije n'ingingo ya 15 n'iya 38 y'Itegeko Nshinga; Rutegetse ko uru rubanza rutangazwa mu Igazeti ya Leta ya Repubulika y'u Rwanda.

Amategeko yashingiweho:

Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu 2003 ryavuguruwe mu 2015, ingingo ya 4,10,15,17,18,38,41,97,98,108.

Itangazo Mpuzamahanga ku Burenganzira bwa Muntu ryo 1948, ingingo ya 19.

Amasezerano Mpuzamahanga ku Burenganzira mu by'Imbonezamubano na Politiki, ingingo ya 19.

Itegeko N° 54/2011 ryo kuwa 14/12/2011 ryerekeye uburenganzira bw'umwana n'uburyo bwo kumurinda no kumuregera

Imanza zifashishijwe:

Re Uwinkindi, RS/INCONST/PEN0005/12/CS rwaciwe n'Urukiko rw'Ikirenga kuwa 22/02/2013.

Joseph Shine v Union of India 2018 SCC Online SC1676 delivered on 27 September, 2018.

Joseph Burstyn, Inc. v. Wilson, U.S. Supreme Court, 343 U.S. 495 (1952).

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Ibitekerezo by'abahanga byifashishijwe:

Bizimana Simon na Kayumba Charles, Inkoranyamagambo Iciriritse, 2010 p. 410.

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Organization for Security and Cooperation in Europe "Defamation and Insult Laws in the OSCE Region: A comparative Study" March 2017.

Parliamentary Assembly of the Council of Europe, Recommendation 1805 (2007).

T. Tridimas, The General principles of EC Law (OUP, 2nd ed, 206).

Urubanza

I. IMITERERE Y'URUBANZA

[1] Mugisha Richard yatanze ikirego mu Rukiko rw'Ikirenga avuga ko nyuma y'uko hatangajwe mu Igazeti ya Leta Itegeko N°68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, yarisomye agasanga ingingo za 136, 138, 139, 154, 233 n'iya 236 z'Itegeko N°68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, zinyuranyije n'Itegeko Nshinga rya Repubulika y'u Rwanda, ryo muri 2003 ryavuguruwe mu mwaka wa 2015.

[2] Ingingo zisabirwa kuvanwaho kuko zinyuranyije n'Itegeko Nshinga ni esheshatu (6), ziri mu byiciro bibiri: icyiciro cya mbere kigizwe n'ingingo eshatu (3): iya 154, 233 n'iya 236 z'Itegeko N°68/2018 ryavuzwe haruguru. Ingingo ya 154 iteganya ko umuntu wese usebya mu ruhame imihango y'idini, ibimenyetso byaryo n'ibikoresho by'imihango yaryo akoresheje ibikorwa, amagambo, ibimenyetso, inyandiko, amarenga cyangwa ibikangisho abigiriye aho imihango y'idini igenewe gukorerwa cyangwa isanzwe ikorerwa, aba akoze icyaha. Iya 233 iteganya ko umuntu wese ukoza isoni mu magambo, mu

bimenyetso cyangwa ibikangisho, inyandiko cyangwa ibishushanyo, umwe mu bagize Inteko Ishinga Amategeko mu gihe akora umurimo yatorewe cyangwa biturutse kuri uwo murimo, umwe mu bagize Guverinoma, abashinzwe umutekano cyangwa undi wese ushinze umurimo rusange w'igihugu mu gihe akora umurimo ashinzwe cyangwa ari wo biturutseho, aba akoze icyaha. Naho iya 236 igateganya ko umuntu wese utuka cyangwa usebya Perezida wa Repubulika, aba akoze icyaha. Izi ngingo zinateganywa ibihano kuri buri cyaha.

[3] Mugisha Richard avuga ko izo ngingo zinyuranyije n'ingingo ya 15 y'Itegeko Nshinga rya Repubulika y'u Rwanda, kuko zirengera ababarirwa mu byiciro bimwe hashingiwe ku mirimo bakora, kandi abantu bose bareshya imbere y'amategeko¹. Anavuga ko izo ngingo zibangamiye ubwisanzure bw'Itangazamakuru, ryaba iryandika, ryaba irikoresha ibishushanyo ndetse n'amagambo, buteganywa n'ingingo ya 38 y'Itegeko Nshinga², kuko hashingiwe ku biteganywa n'izo ngingo, Itangazamakuru ritemerewe kugira icyo ritangaza kuri ibyo byiciro by'abayobozi cyangwa amadini mu buryo bwo kunenga ibi n'ibi, kandi iyo ngingo iteganywa ko ubwisanzure bw'Itangazamakuru, ubwo kugaragaza ibitekerezo n'ubwo guhabwa amakuru bwemewe kandi bwubahirizwa na Leta.

[4] icyiciro cya kabiri kigizwe n'ingingo eshatu (3): iya 136 iteganywa ko umuntu wese washyingiwe ukorana imibonano mpuzabitsina n'uwo batashyingiranywe, aba akoze icyaha. Iya 138 iteganywa ko umuntu ubana nk'umugabo n'umugore n'uwo batashyingiranywe umwe muri bo cyangwa bombi bafite uwo bashyingiranywe, aba akoze icyaha. Naho iya 139 iteganywa ko umwe mu bashyingiranywe uta urugo rwe mu gihe kirenze amezi abiri (2) nta mpamvu zikomeye akihunza ibyo ategetswe, aba akoze icyaha. Mugisha Richard asanga izi ngingo zinyuranye n'ingingo ya 18 y'Itegeko Nshinga rya Repubulika y'u Rwanda iteganywa ko Leta ifite inshingano yo gushyiraho amategeko n'inzego bishinzwe kurengera umuryango kugira ngo ugire ubwisanzure, nyamara ingingo za 136, 138 n'ya 139 zikaba ziteganywa igihano cy'igifungo kuri umwe mu bashakanye kandi umuryango udashobora kurengerwa cyangwa ngo ugire ubwisanzure mu gihe umwe mu bawugize yaba afunzwe.

[5] Intumwa ya Leta Me Kabibi Speçiose yatanze inzitizi yo kutakira ikirego cyatanzwe na Mugisha Richard ku mpamvu z'uko nta nyungu afite zo kugitanga. Ku wa 18/03/2018, Urukiko rwafashe icyemezo kuri iyo nzitizi, rwemeza ko Mugisha Richard afite inyungu yo gutanga ikirego gisaba kwemeza ko ingingo z'itegeko zinyuranyije n'Itegeko Nshinga.

[6] Urukiko kandi rwemeje ko, kubera uburemere bw'ibibazo bizasuzumwa muri uru rubanza ruburanishwa mu mizi, abantu n'ibigo cyangwa imiryango itegamiye kuri Leta bifuzaga gutanga ibitekerezo muri uru rubanza nk'inshuti z'urukiko (*Amicus Curiae*) kandi babifitiye ubumenyi, babisaba binyujijwe ku Bwanditsi bw'Urukiko rw'Ikirenga bitarenze tariki ya 8/02/2019, bakanatanga inyandiko bifuzaga kugeza ku Rukiko bitarenze tariki ya 28/02/2019.

[7] Nyuma yo kubona inyandiko zinyuranye z'abashakira kuba muri uru rubanza nk'inshuti z'urukiko (*Amicus Curiae*) mu rwego rwo gutanga ibitekerezo, Urukiko rwarazisesenguye maze rwemeza ko aba bakurikira aribo bujije ibisabwa akaba aribo bagomba kwitaba urukiko mu iburanisha ry'uru rubanza nk'inshuti z'urukiko (*Amicus Curiae*), aribo: ARJ (Ihuriro ry'Abanyamakuru n'abandi bakora mu itangazamakuru mu Rwanda), Impuzamiryango PRO-FEMMES / TWESE hamwe n' Ishuli ry'Amategeko rya Kaminuza y'u Rwanda (School of Law), maze bakora imyanzuro bagaragaza ibitekerezo ku kirego cya Mugisha Richard.

¹ Ingingo ya 15 iteganywa ko: "Abantu bose bareshya imbere y'amategeko. Itegeko ribarengera ku buryo bumwe

² Ingingo ya 38 iteganywa ko: "Ubwisanzure bw'itangazamakuru, ubwo kugaragaza ibitekerezo n'ubwo guhabwa amakuru buremewe kandi bwubahirizwa na Leta. Ubwisanzure bwo kugaragaza ibitekerezo n'ubwo guhabwa amakuru ntibugomba kubangamira ituze rusange rya rubanda n'imyifatire mbonezabupfura, ukurengera urubyiruko n'abana, n'uburenganzira bw'umwengihugu bwo kugira icyubahiriro n'agaciro, ubwo kutagira uwivanga mu mibereho ye bwite n'iy'umuryango we. Uko ubwo bwisanzure bukoreshwa n'iyubahirizwa ryabwo biteganywa n'amategeko".

[8] Urubanza rwaburanishijwe ku wa 18/03/2019, Mugisha Richard yunganiwe na Me Kabasinga Floride na Me Nkundabarashi Moise, Leta ihagarariwe na Me Kabibi Speçiose, PRO FEMME TWESE HAMWE ihagarariwe na Kanakuze Jeanne d’Arc yunganiwe na Me Munyankindi Monique, ARJ ihagarariwe na Me Gakunzi Musore Valery, naho ishuri ry’amategeko muri Kaminuza y’u Rwanda rihagarariwe na Denis Bikeshya, Alphonse Muleefu, Yves Sezirahiga, Etienne Ruvebana.

II. IBIBAZO BIGIZE URUBANZA N’ISESENGURA RYABYO

i. Kumenya niba ingingo ya 136, 138 n’iya 139 z’Itegeko N°68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n’ibihano muri rusange zinyuranyije n’ingingo ya 18 y’Itegeko Nshinga rya Repubulika y’u Rwanda.

[9] Mugisha Richard avuga ko yatanze ikirego agamije kugaragaza ko ingingo ya 136, 138 n’iya 139 z’Itegeko N° 68/2018 ryavuzwe haruguru zinyuranyije n’ingingo ya 18 y’Itegeko Nshinga rya Repubulika y’u Rwanda, kuko ziteganya igihano cy’igifungo kuri umwe mu bashakanye, wahamijwe icyaha cy’ubusambanyi, ubushoreke cyangwa se guta urugo, kandi umuryango udashobora kurengerwa cyangwa ngo ugire ubwisanzure, umwe mu bawugize afunze. icyakora ko atatanze icyo kirego nk’ushyigikiye imyitwarire ivugwa muri izo ngingo ahubwo ko yagitanze asaba ko harebwa niba iyo myitwarire mibi mu kuyikumira byari bikwiye ko ishyirwa mu mategeko ahana ibyaha.

[10] Avuga ko ibiteganywa mu ngingo ya 136, 138 n’iya 139 z’Itegeko N° 68/2018 ryavuzwe haruguru, bibangamiye umubano w’abagiranye amasezerano yo gushyingirwa uko ari babiri, kuko baba barayakoze bashingiye ku rukundo bafitanye ndetse bakabyara abana, ku buryo inshingano ya mbere yo kubaka ari iya ba nyiri ubwite, kandi igituma bakomeza kubana mu mahoro bisaba ko uwakoshereje undi amusaba imbabazi, bakababarirana bakiyunga.

[11] Mugisha Richard akomeza avuga ko ingingo zihana icyaha cy’ubusambanyi, ubushoreke no guta urugo zinyuranyije n’ingingo ya 18 y’Itegeko Nshinga rya Repubulika y’u Rwanda iteganya ko umuryango ariwo shingiro kamere y’imbaga y’abanyarwanda, urengerwa na Leta, ko ingingo yaregeye ziteganya igihano cy’igifungo kuri umwe mu bashyingiranywe uhamijwe icyaha, mu gihe umuryango udashobora kurengerwa umwe mu bawugize afunzwe.

[12] Akomeza avuga ko ingingo ya 18 y’Itegeko Nshinga igaragaza ko Leta ishyiraho amategeko n’inzego bikwiye mu kurengera umuryango, ariyo mpamvu basanga ibikorwa by’ubusambanyi, ubushoreke no guta urugo kuba byarashyizwe mu mategeko ahana atari uburyo bukwiye mu rwego rwo kurengera umuryango, kuko bifunga iyo nzira yo gusabana imbabazi no kwiyunga, bityo ntibyubake umuryango ahubwo bigatera ingaruka zitari nziza ku muryango.

[13] Me Kabasinga Florida avuga ko usibye no kuba ingingo ya 136, 138 n’iya 139 z’Itegeko N° 68/2018 ryavuzwe haruguru, zinyuranyije n’Itegeko Nshinga rya Repubulika y’u Rwanda, zinanyuranyije n’amahame mpuzamahanga ndetse n’imanza zaciwe n’inkiko mpuzamahanga. Asobanura ko koko imyitwarire ivugwa muri izo ngingo atari myiza, ariko bikagengwa n’andi mategeko kuko abahanga mu by’amategeko bavuga ko amategeko mpanabyaha atari igikoresho cyo gukoresha ahantu hose ku muntu ukoze ikibi.

[14] Avuga ko kuba ubusambanyi, ubushoreke no guta urugo bidahungabanya rubanda ahubwo bikorerwa uwashakanye n’undi gusa, nta wundi muntu bigiraho ingaruka, dore ko n’itegeko riteganya ko bihanwa ari uko umwe mu bashakanye areze mugenzi we, ko iyo nta kibazo byamuteye nta wundi muntu ukwiye kubigiraho ikibazo, bikaba bidakwiye ko bishyirwa mu mategeko mpanabyaha. Atanga urugero rw’urubanza rwaciwe n’Urukiko rw’Ikirenga rwa India³, ko muri urwo rubanza hasobanuwe ko kugira ngo igikorwa cyitwe icyaha kigomba kuba kibangamiye rubanda cyangwa sosiyete, kandi ko kugira ngo

³ PETITION (CRIMINAL) N° 194 OF 2017, Joseph Shine v. Union of India

hashyirweho ibihano mpanabyaha byanze bikunze icyo gikorwa gihanwa gikwiye kuba hari aho cyangiriza rubanda; ariyo mpamvu asanga ibyaha bigaragara mu ngingo ya 136, 138 n'ya 139 z'Itegeko N° 68/2018 ryavuzwe haruguru, kuba ntaho bihuriye na rubanda, ari mpamvu ikomeye ituma iyo myitwarire idakwiye kugengwa n'amategeko ahana ibyaha.

[15] Me Nkundabarashi Moïse avuga ko ibiteganywa mu ngingo ya 136, 138 n'ya 139 z'Itegeko N° 68/2018 ryavuzwe haruguru, byagombye kuba mu mategeko mbonezamubano, kuko ingingo ya 2 agace ka 1 y'iryo tegeko rivuzwe, iteganya ko icyaha ari igihungabanya umutekano w'abantu, mu gihe ibiteganywa n'izo ngingo uko ari eshatu bishingiye ku masezerano y'abantu 2 hagati yabo kuko umwe muri bo ariwe wemerewe gutanga ikirego, kandi ko ingingo ya 18 y'Itegeko Nshinga ivuga ko ubwisanzure bw'umuryango bugomba kurengerwa, kandi bukaba butarengerwa umwe mu bawugize afunzwe, cyane cyane ko nta bushakashatsi bwakozwe ngo bugaragaze ko ufunguwe kubera kimwe muri ibyo byaha abana neza n'uwari wamureze, ahubwo ko ikigaragara ari uko amakimbirane yiyongera.

[16] Akomeza avuga ko kuba ibyo byaha bikomoka ku masezerano yo gushyingirwa, kandi ikirego kikaba kidashobora kwakirwa kidatanzwe n'umwe mu bashakanye, kuko undi wese utari uwo mu bashakanye wavuga ko yabonye umuntu wataye urugo cyangwa yibereye mu nshoreke adashobora gutanga ikirego ngo cyakirwe, ndetse na police ikaba itemerewe, bikaba byumvikanisha ko biba bitakorewe sosiyete, ko bitari mu nyungu rusange.

[17] Me Kabibi Speçiose, Intumwa ya Leta avuga ko ibyo Mugisha n'abamwunganira bavuga ko ibyo byaha bishingiye ku masezerano bidakwiye kwitwa ibyaha atari byo kuko hari ibikorwa byinshi bifatwa ko ari ibyaha ku isi kandi bishingiye ku masezerano, atanga urugero rw'icyaha cyo kwaka ikitari bwishyurwe, kuko iki cyaha nacyo gishingiye ku masezerano y'ugura n'ugurisha, ubuhemu n'ibindi.

[18] Avuga ko ibyaha by'ubusambanyi, ubushoreke no guta urugo ari ibikorwa bibi bishobora kugira ingaruka (harmful consequences) kuri rubanda nyamwinshi (public harm), ku gaciro ka muntu, ku ndangagaciro z'igihugu n'abenegihugu bagenderaho ; ko ari imyitwarire itandukanye n'imyitwarire myiza, n'imyifatire mbonezabupfura bitesha umuntu agaciro, ariyo mpamvu Leta iba igomba kubyinjiramo mu rwego rwo kubihana no kubikumira.

[19] Kanakuze Jeanne d'Arc mu izina ry'Impuzamiryango PRO-FEMMES / TWESE HAMWE, avuga ko ingingo ya 136, iya 138 n'ya 139 z'Itegeko N°68/2018 N° 68/2018 ryo ku wa 30/08/2018 riteganywa ibyaha n'ibihano muri rusange, zitakurwaho, kuko byatuma ubusambanyi, ubushoreke no guta urugo bifatwa nkaho byemewe kandi byagira ingaruka zikomeye zisenya umuryango nyarwanda ku buryo nta muryango utekanye wakongera kubaho, kuko uba wavukijwe umudendezo.

[20] Me Munyankindi Monique wunganira PRO-FEMMES / TWESE HAMWE avuga ko ingingo ya 18 y'Itegeko Nshinga iha Leta inshingano yo kurengera umuryango kuko ariwo shingiro kamere ry'imbaga y'abanyarwanda, ku buryo biri mu nshingano zayo gushyiraho amategeko ahana uwakora ibikorwa bihungabanya umuryango mu buryo ubwo ari bwo bwose, ariyo mpamvu izo ngingo zashyirweho kubungabunga ubusugire n'ubwisanzure bw'umuryango kuko bimwe mu bikorwa izo ngingo zihana bishobora gukurura amakimbirane mu muryango bikanaganisha ku isenyuka ryawo ndetse n'impfu za hato na hato.

[21] Denis Bikesha, Alphonse Muleefu na Yves Sezirahiga, mu izina ry'Ishuli ry'amategeko rya Kaminuza y'u Rwanda, bavuga ko icyaha nk'uko ingingo ya 2 agace ka 1 y'Itegeko N°68/2018 ryo ku wa 30/08/2018 riteganywa ibyaha n'ibihano muri rusange, ari igikorwa kibujijwe n'itegeko cyangwa kwanga gukora igiteganywa n'itegeko, ku buryo bihungabanya umutekano mu bantu (ordre public). Bavuga ko kuba igikorwa kiba kibangamiye umutekano w'abantu ariyo mpamvu Leta ifata iya mbere mu gukurikirana uwabikoze, kuko icyo gikorwa kiba cyahungabanyije inyungu rusange (general interest). Basobanura ko Ubutegetsi Nshingamategeko bugomba kwirinda kurengera mu kugena imyitwarire runaka nk'ihanwa n'amategeko nshinjabyaha mu gihe iyo myitwarire itujuje ibisabwa ngo ibe icyaha; ibyo akaba ari byo

byitwa ‘overcriminalisation’, bishobora kubera umutego abaturage mu gihe bakabaye barengerwa n’Itegeko.

[22] Bavuga ko kuba ishyingirwa rishingiye ku bushake bukomoka ku rukundo, bugamije gushinga urugo, mu gihe ubwo bushake cyangwa urukundo bitagihari kugeza aho umwe mu bashakanye afata icyemezo cyo kutubahiriza isezerano yahaye mugenzi we, inkiko nshinyabaha atarizo zagakwiye gukemura icyo kibazo ahubwo ko cyagakemuwe n’inkiko mbonezamubano kuko ari nazo zahawe inshingano yo kuburanisha cyangwa gukemura ibibazo by’umuryango.

[23] Bavuga kandi ko guteganya igihano cy’igifungo ku busambanyi, ubushoreke no guta urugo, bituma abagize umuryango batumvikana, ntibite ku nshingano zo kurera abana no kubishyurira amashuri, ku buryo bigera aho uwahemukiwe ahatirwa gutanga imbabazi. Ko rero ibyo bigaragaza ko umuryango utaba urengewe dore ko kugeza ubu nta kigaragaza ko hari uwafunguwe ngo abane neza n’uwo bashyiranywe. Bavuga ko ibyo bitaba bibaye umwihariko w’u Rwanda, kuko mu bihugu byateye imbere nko mu Buhindi, mu Bwongereza, muri Koreya y’Amajyepfo, Afurika y’epfo, Nigeria na Ghana, ndetse no mu bihugu bya Asia, ubusambanyi bwahozwe ari icyaha ubu butakiri cyo ahubwo bufatwa nk’ikosa risanzwe rishobora kuba impamvu y’ubutane n’indishyi z’akababaro.

UKO URUKIKO RUBIBONA

[24] Ingingo ya 18 y’Itegeko Nshinga rya Repubulika y’u Rwanda ryo muri 2003 ryavugururwe mu mwaka wa 2015 iteganya ko : “Umuryango, ari wo shingiro kamere ry’imbaga y’Abanyarwanda, urengerwa na Leta. Ababyeyi bombi bafite uburenganzira n’inshingano zo kurera abana babo. Leta ishira amategeko n’inzego bikwiye bishinzwe kurengera umuryango, by’umwihariko umwana na nyina, kugira ngo umuryango ugire ubwisanzure.”

[25] Ingingo ya 18 imaze kuvugwa mu gika kibanziriza iki, ikubiyemo ibitekerezo bitatu aribyo kugaragaza umuryango nk’ishingiro ry’umuryango nyarwanda ; uburenganzira n’inshingano by’ababyeyi bijyanye no kurera abana, ndetse n’inshingano ya Leta yo kurengera umuryango n’abawugize.

[26] Ingingo z’Itegeko N°68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n’ibihano muri rusange zisabirwa kuvanwaho na Mugisha Richard kuko zaba zinyuranye n’ingingo ya 18 y’Itegeko Nshinga, ni iya 136 iteganya icyaha cy’ubusambanyi, iya 138 iteganya icyaha cy’ubushoreke, n’iya 139 iteganya icyaha cyo guta urugo.

[27] Ingingo ya 136 y’Itegeko N°68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n’ibihano muri rusange iteganya ko : Umuntu wese washyigirwe ukorana imibonano mpuzabitsina n’uwo batashyiranywe, aba akoze icyaha. Iyo abihamijwe n’urukiko ahanishwa igifungo kitari muni y’amezi atandatu (6) ariko kitarenze umwaka umwe (1). Gukurikirana icyaha cy’ubusambanyi ntibishobora kuba hatareze uwahemukiwe mu bashyiranywe ku buryo bwemewe n’amategeko. Muri icyo gihe hakurikiranwa uwarezwe n’uwakoranye icyaha na we. Uwahemukiwe ashobora gusaba guhagarika ikurikiranwa ry’urubanza, aho rwaba rugeze hose, iyo yisubiyeho akareka ikirego cye. icyakora, iyo dosiye yarangije kuregerwa urukiko cyangwa gufatwaho icyemezo, kwisubiraho ntibihita bihagarika isuzumwa ry’urubanza cyangwa irangiza ryarwo. Umucamanza arabisuzuma akaba yabyemera cyangwa akabyanga akanasobanura impamvu. Iyo umucamanza yemeye ukwisubiraho k’uwahemukiwe, kureka urubanza cyangwa irangiza ryarwo bigira ingaruka no kuwakoranye icyaha n’uregwa”.

[28] Ingingo ya 138 y’Itegeko N°68/2018 ryavuzwe mu gika kibanziriza iki iteganya ko: “umuntu ubana nk’umugabo n’umugore n’uwo batashyiranywe umwe muri bo cyangwa bombi bafite uwo bashyiranywe, aba akoze icyaha. Iyo abihamijwe n’urukiko, ahanishwa igifungo kirenze umwaka umwe (1) ariko kitarenze imyaka ibiri (2)”. Iya 139 iteganya ko: “Umwe mu bashyiranywe uta urugo rwe mu gihe kirenze amezi abiri (2) nta mpamvu zikomeye akihunza ibyo ategetswe, aba akoze icyaha. Iyo

abihamijwe n'urukiko, ahanishwa igifungo kitari muni y'amezi atatu (3) ariko kitarenze amezi atandatu (6). Ibihano bivugwa mu gika cya 2 cy'iyi ngingo nibyo bihabwa umugabo utaye umugore we ku bushake, nta mpamvu ikomeye, mu gihe kirenze ukwezi kumwe (1) azi ko atwite. icyakora, kutabana bitewe n'uko umwe mu bashyingiranywe afashwe nabi ntabwo byitwa guta urugo mu gihe yagiye abimenyesheje ubuyobozi bumwegereye bigakorera inyandiko.”

[29] Mugisha Richard afata ingingo ziteganyira icyaha cy'ubusambanyi, ubushoreke no guta urugo, nk'izinyuranye n'Itegeko Nshinga kuko asanga gukurikirana no guhana ibyo byaha, bisenya umuryango aho kuwubaka kuko umwe mu bawugize aba afunzwe, ko zibangamira ubwisanzure bw'umuryango, ko ibyo byaha bishingiye ku masezerano aba yakozwe n'abantu babiri, bikaba bibangamiye ubwiyunge no kubabarirana hagati y'abashakanye.

a. Kuba icyaha cy'ubusambanyi, ubushoreke, guta urugo byaba bishingiye ku masezerano, bikaba bidakwiye kuba ibyaha ahubwo bikaba amakosa mbonezamubano.

[30] Mugisha Richard asaba ko ingingo ya 136 iteganyira icyaha cy'ubusambanyi, iya 138 iteganyira icyaha cy'ubushoreke, n'iya 139 iteganyira icyaha cyo guta urugo zavaho kuko asanga zishingiye ku masezerano mbonezamubano ibyo bikorwa bikaba ahubwo bikwiye kugengwa n'amategeko mbonezamubano.

[31] Bitewe n'ikigamijwe, Umushingamategeko ashobora gufata ibikorwa bimwe akagenda ko ari icyaha kandi ko bihanishwa igifungo kabone nubwo byaba bifitanye isano n'amasezerano. Ubusambanyi, ubushoreke no guta urugo biba ibyaha kuko umwe mu babikoze aba afitanye n'undi amasezerano yo gushyingirwa, ariko ibyo ntibyaba impamvu yo kuvuga ko binyuranye n'Itegeko Nshinga kuko ntaho biteganyijwe mu mategeko ko igikorwa gishingiye ku masezerano kitaba icyaha. icyo izo ngingo zihana ni ubusambanyi, ubushoreke no guta urugo, ntabwo hahanwa igikorwa cyo kwica amasezerano yo gushyingirwa. Ibyo Itegeko Nshinga ritemera mu ngingo yaryo ya 29, 7⁰, ni uko hari uwafungwa bitewe gusa no kutagira ubushobozi bwo kubahiriza inshingano ituruka ku masezerano, kandi siko bimeze ku bikorwa by'ubusambanyi, ubushoreke no guta urugo.

[32] Ibikorwa bitandukanye bifite aho bihurira n'amasezerano itegeko rishobora kugena ko bigize icyaha, rikabigena igihano cy'igifungo. Urugero ni icyaha cy'ubuhemu giteganywa n'ingingo ya 176, icyaha cyo kurigisa ibyafatirwe bikozwe n'umuntu ushinze kubirinda (ingingo ya 248), kurigisa cyangwa kwangiza ibyatanzweho ingwate (ingingo ya 178) n'ibindi. Kuri ibi bikorwa, itegeko rigena ko bikurikiranwa nk'ibyaha. Ibyo kandi ntibibuzwa abo byangirije kuba bakoresha n'inzira y'imbonezamubano baregera indishyi cyangwa iyubahirizwa ry'amasezerano. icyangombwa n'uko ibyo byaha byose bifite aho bibangamira inyungu rusange, zikaba zigomba kurengerwa n'itegeko.

[33] Urukiko rusanga kandi amasezerano y'ubushyingiranwe atari amasezerano asanzwe. Ni amasezerano afite umwihariko, akeneye kurindwa na Leta nkuko biteganywa mu ngingo ya 18 y'Itegeko Nshinga. Niyo mpamvu itegeko rishyiraho uburyo bwemewe bwo gushyingiranwa, Leta ikaba ifite n'uruhare mu mihango ikurikizwa kugira ngo habeho ubushyingiranwe bwemewe n'amategeko. Urukiko rusanga kandi gukurikirana imibanire y'abashyingiranywe bigamije inyungu rusange zigaragara. Uretse gukumira icyahungabanya umutekano n'umudendezo w'abagize umuryango, amategeko ahana ubusambanyi, ubushoreke no guta urugo arengera umutekano n'imibereho myiza y'abana. Nkuko Itegeko Nshinga ribivugaga mu ngingo ya 18, ababyeyi bombi bafite inshingano zo kurera abana babo, iya 19 ikavugaga ko umwana wese afite uburenganzira bwo kurengerwa ku buryo bwihariye n'umuryango we, abandi banyarwanda na Leta. Mu gihe rero umwe mu bashyingiranywe ahugiye mu busambanyi, afite inshoreke agomba kwitaho cyangwa agata urugo, byaba bigoye kubahiriza izo inshingano zo kurera abana be uko bikwiye.

[34] Ibivuzwe mu gika kibanziriza iki bijyanye kandi n'ikibazo cyo gusesagura umutungo w'urugo ukaba wakoreshwa mu nyungu zitari iz'umuryango, ujya mu kwinezeza no kunezeza uwo bafatanije mu bikorwa by'ubusambanyi n'ubushoreke ndetse no kubatunga aho bibaye ngombwa. Ibi ntibitanga

ubwisanzure, umudendezo n'iterambere ry'umuryango; kandi iyo umuryango utamerewe neza, bigira ingaruka ku iterambere ry'Igihugu. Umutungo usesagurwa wakabaye ushorwa mu bikorwa bifitiye umuryango akamaro.

[35] Ku bivugwa na Mugisha Richard ko ingingo z'Itegeko zihana icyaha cy'ubusambanyi, ubushoreke no guta urugo zitageze ku ntego yatumye zishyirwaho bitewe nuko ubutane bushingiye kuri ibyo bikorwa bugenda bwiyongera, ko ndetse ingengo y'imari ikoreshwa mu gukurikirana ibyo byaha yakoresha mu bindi bikorwa biteza imbere ubutabera, uru Rukiko rurasanga izi nenge zidafite ishingiro kuko atagaragaza ko ubusambanyi, ubushoreke no guta urugo bidakumirwa uko bikwiye. Nkuko bisanzwe bizwi kandi muri politiki yo guhana, gukumira icyaha (deterrence) ni imwe mu ntego zo guhana ariko ntabwo ariyo yonyine kuko hari n'izindi ntego nko kubuza kwihorera, no kugorora uwakoze icyaha. Icyakorwa ni ukongera imbaraga mu ngamba zo gukumira ntabwo ari ukuvanaho itegeko.

[36] Ku bijyanye no kuba hari ibihugu binyuranye byakuyeho icyaha cy'ubusambanyi hakaba hari byinshi aho ubushoreke no guta urugo bitigeze biba icyaha, Urukiko rusanga ibyo bitaba impamvu yo gukura ibyo byaha mw'itegeko rihana ibyaha mu Rwanda. Hari nk'igihugu cy'Ubuhande, South Korea, Ghana n'ibindi bidahana ubusambanyi ariko hakaba n'ibindi byinshi bibuhana. Buri gihugu kigira umuco n'indangagaciro byacyo cyimakaza, hakaba n'izindi kitemera. Mu Rwanda ubusambanyi, ubushoreke no guta urugo ntabwo ari imico cyangwa indangagaciro zaruranze kuva kera. Ahubwo n'ababikora babikora rwihishwa kuko bazi ko umuryango nyarwanda utabishyigikiye.

[37] Habagaho kwahukana kw'umugore agataha iwabo aho avuka kugaragaza ko hari ibitagenda iwe, ko umugabo atamufashe neza bikazarangira umugabo aje kumucyura agatanga inka yo kwemererwa kumucyura. Ntibyafatwaga nko guta urugo ahubwo byabaga uburyo bwo kugarura imibanire myiza mu rugo. Ni nayo mpamvu mu itegeko hari "exception" ku cyaha cyo guta urugo aho ingingo ya 139 agace ka 4 ivuga ngo : *"Icyakora kutabana bitewe n'uko umwe mu bashyingiranywe afashwe nabi ntabwo byitwa guta urugo mu gihe yagiye abimenyeshije ubuyobozi bumwegereye bigakorera inyandiko."*

[38] Indi mpamvu ituma u Rwanda rutakwihutira guhindura itegeko kuri ibi byaha, n'uko nta mahame mpuzamahanga rinyuranye nayo. Mu mwaka wa 2012, Itsinda⁴ ry'Akanama k'Umuryango w'Abibumye gashinzwe iby'Uburenganzira bwa Muntu, ryasabye ibihugu kudafata ubusambanyi nk'icyaha kuko risanga bibangamiye uburenganzira bw'abagore. Mu bisobanuro byatanze n'iryo tsinda risaba ibyo, nuko amategeko yo mu bihugu byinshi ateganya icyaha cy'ubusambanyi ku bagore gusa, ko nta mugabo ukora icyaha cy'ubusambanyi, ndetse ahandi hahanwa abagore gusa abagabo ntibahanwe cyangwa amategeko agateganya ibihano bitandukanye. Urukiko rurasanga icyo kibazo kitari mu Rwanda kuko umugabo cyangwa umugore, buri wese ashobora gukurikiranwaho icyaha cy'ubusambanyi ndetse n'igihano kuri icyo cyaha, ni kimwe hatitawe ku gitsina cy'ugomba guhanwa, bivuze ko nta vangura riri mu mategeko akoreshwa mu gukurikirana no guhana icyaha cy'ubusambanyi, ubushoreke no guta urugo.

[39] Impamvu zatanze n'Akanama k'Umuryango w'Abibumye wavuzwe mu gika kibanziriza iki ni zimwe mu mpamvu zashingiweho mu rubanza rwa Joseph Shine V. Union of India rwaciye n'Urukiko rw'Ikirenga rwo mu Buhinde, Mugisha asaba ko rwaba ikitegererezo, rugashingirwaho havanwaho ingingo ihana ubusambanyi nkuko byakozwe muri urwo rubanza. Ingingo ya 497 y'Itegeko rihana ibyaha mu gihugu cy'u Buhinde yahanaga icyaha cy'ubusambanyi ku mugabo wahamijwe kuba yaragize imibonano mpuzabitsina n'umugore washyngiwe (married woman). Umugore ntiyashoboraga guhanwa nk'uwakoze icyaha cyangwa nk'umufatanyaga cyaha. Umugabo wahemukiwe niwe wenyine washoboraga gutanga ikirego, umugore wahemukiwe nta burenganzira yari afite bwo kurega. Urukiko rurasanga koko muri urwo rubanza ingingo ihana icyaha cy'ubusambanyi yaravanyweho, ariko ku mpamvu zitandukanye n'izishingirwaho na Mugisha. Urukiko rw'Ikirenga rwo muri icyo gihugu rwasanze itareshyeshya abantu imbere y'amategeko, igaragaramo ivangura rishingiye ku gitsina kandi ibangamiye ubwisanzure bwa

⁴ UN Working Group on Women's Human Rights: Report (18 October, 2012), available at: [http://news archive.ohchr.org/EN/News Events/Pages/DisplayNews.aspx?NewsID=12672&Lang](http://news.archive.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12672&Lang)

muntu, bikaba byari binyuraniye n'ingingo za 14, 15 na 21 z'Itegeko Nshinga ryo mu Buhinde n'amahame mpuzamahanga ku burenganzira bwa muntu.⁵ Izo mpamvu ntaho zihuriye n'izitangwa na Mugisha asaba ko Urukiko rwakuraho icyaha cy'ubusambanyi.

[40] Hashingiwe ku bisobanuro bimaze gutangwa, Urukiko rurasanga kuba icyaha cy'ubusambanyi, ubushoreke, no guta urugo byaba bishingiye ku masezerano, atari impamvu yatuma bidakurikiranwa ngo bihanwe nk'ibyaha.

b. Gusenya umuryango no kubangamira ubwisanzure bwawo mu mwanya wo kuwurengera.

[41] Ingingo ya 23 y'Itegeko N°68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange ivuga ko : *“Ibihano by'iremezo bihabwa abantu ku giti cyabo ni ibi bikurikira: igifungo [...]”*. Iyi ngingo igaragaza igifungo nka kimwe mu bihano byemewe mu mategeko y'u Rwanda.

[42] Umwe mu bagize umuryango (umugabo cyangwa umugore) wahamwe n'icyaha cy'ubusambanyi, icyaha cy'ubushoreke cyangwa icyaha cyo guta urugo, ashobora guhanishwa igifungo. Nkuko Mugisha abivuga, gufunga umwe mu bagize umuryango bishobora kuwugiraho ingaruka zitandukanye. Urukiko rusanga ariko, uko gufungwa k'umwe mu bagize umuryango wahamwe na kimwe mu byaha byavuzwe haruguru, byafatwa nk'igihano ku cyaha cyakozwe, igifungo kikaba cyemewe nka kimwe mu bihano byemewe mu mategeko y'u Rwanda nkuko byasobanuwe mu gika kibanziriza iki.

[43] Muri rusange, igihano cy'igifungo kigira ingaruka k'uwagihawe no ku muryango we. Urukiko rusanga ariko, nta mwihariko uhari ku muryango w'uwahamwe n'icyaha cy'ubusambanyi, ubushoreke no guta urugo agahanishwa gufungwa kuburyo byaba impamvu yo kuvanaho ingingo z'itegeko ziteganya ibyo byaha. Ingaruka z'igifungo ku muryango ni zimwe hatitawe ku cyaha cyatumye gitangwa. Ndetse na Mugisha watanze ikirego, akaba atarigeze agaragaza cyangwa ngo avuge ko ingaruka zituruka ku gifungo gihanishwa uwahamwe n'icyaha cy'ubusambanyi, ubushoreke no guta urugo zitandukanye, n'izaterwa n'uwahamwe n'ibindi byaha nk'ubujura, ubwicanyi, gusambanya abana n'ibindi.

[44] Urukiko rusanga ruramutse rwemeje ko ingingo ziteganya icyaha cy'ubusambanyi, ubushoreke no guta urugo zinyuranye n'Itegeko Nshinga kuko umwe mu bagize umuryango ahanishwa igifungo iyo yahamwe nibyo byaha, byaba bivuze ko n'izindi ngingo ziteganya igihano cy'igifungo hatitawe ku cyaha, zavaho kuko nkuko byavuzwe harugu, igihano cy'igifungo kigira ingaruka zitandukanye ku muryango w'uwahamwe n'icyaha (nko kuba ari we watangaga ibitunga umuryango, igisebo ku bana, igisebo kuwo bashakanye, n'izindi). Ingaruka z'igihano cy'igifungo ku muryango ntizikwiye gushingirwaho havanwaho ingingo ziteganya icyo gihano, kuko igihano cy'igifungo gitangwa hagamijwe gutanga urugero rutuma abantu batishora mu byaha, kigamije guhana, kugorora no kwigisha. Urukiko kandi rusanga ibihano kuri ibi byaha biri mu rugero, kuko bidakabije mu buremere ugereranije n'ibyaha bireba (proportionality).

[45] Ikindi kibazo cyavuzweho mw'iburanisha ry'uru rubanza, n'icyo ubwisanzure bw'umuryango mu ngingo ya 18 y'Itegeko Nshinga bishatse kuvuga. Mugisha n'abamwunganira bavuga ko umuryango utagira ubwisanzure igihe umwe mu bashakanye afunze kubera icyaha cy'ubusambanyi, ubushoreke cyangwa guta urugo. Ubwisanzure ntabwo ari ugukora icyo buri wese ashaka. Ingingo ya 18 ivuga ko *“Leta ishyiraho amategeko n'inzego bikwiye bishinzwe kurengera umuryango, by'umwihariko umwana na nyina, kugira ngo umuryango ugire ubwisanzure.”* Amagambo *“kugira ngo umuryango ugire ubwisanzure”* byumvikanisha umudendezo n'umutekano w'abagize umuryango. Mu cyongereza amagambo akoreshwa ni *“to flourish”* bisobanuye kugera ku ntego yiyemeje (*to succeed*), kwiteza imbere (*to prosper, to grow*). Ibi byose ntibishobora kugerwaho n'umuryango uhora mu makimbirane no kutabana neza bikunze kuba mu ngo zirimwo ibibazo by'ubusambanyi, ubushoreke cyangwa guta urugo. Ariko no mu kinyarwanda gisanzwe niko bishobora kumvikana. Inkoranyamagambo y'ikinyarwanda ivuga ko 'kwisanzura' ari 'kuba

⁵ Joseph Shine v Union of India 2018 SCC Online SC1676 delivered on 27 September, 2018.

uri ahantu umerewe neza nta mbogamizi'.⁶ Ahari amakimbirane mu rugo, kurwana no gushyamirana bitewe no gucana inyuma cyangwa guta urugo, nta bwisanzure bwaharangwa.

[46] Nkuko PRO FEMME/TWESE HAMWE ibivuga, ubusambanyi, ubushoreke no guta urugo bitera umwuka mubi mu rugo bishobora kuvamo n'impfu za hato na hato. Hanatanzwe ingero z'impfu zatewe n'ubusambanyi, ubushoreke no guta urugo zirimwo abishe abo bashakanye n'abiyahuye kubera kutihanganira iyo imyitwarire inyuranyije n'amategeko, ikaba inanyuranyije n'umuco nyarwanda harimwo kubana mu mahoro mu muryango. Urukiko rusanga guhana ibi byaha atari ugusenya no kubangamira ubwisanzure bw'umuryango ahubwo ari ugukumira icyabuhungabanya.

[47] Ubusambanyi n'ubushoreke bishobora kuvamo kubyara abana hanze y'ubushyingiranwe bigatera amakimbirane hagati y'abashakanye, hagati y'abahemukiwe n'ababahemukiye batari abo bashakanye, ndetse no hagati y'abana bavukiye mu bushyingiranwe n'abavukiye hanze yabwo. Ibi binyuranyije na politiki y'Igihugu cy'u Rwanda yo kuboneza urubyaro bikaba bitanahuje n'Itegeko Nshinga mu ngingo yaryo ya 17, igika cya kabiri, iteganya ko ugushyingiranwa k'umugabo umwe n'umugore umwe gukorewe mu butegegi bwa Leta ari ko kwemewe. Biri mu nyungu rusange ko haba amategeko akumira bene uko kubyara hagati y'abatarashyingiranywe, akanakumira ingaruka zabyo.

[48] Nkuko bisobanuwe mu bika bibanziriza iki, kuba Itegeko N°68/2018 ryo ku wa 30/08/2018 rifata ubusambanyi, ubushoreke no guta urugo nk'ibyaha ndetse rikanagena igihano cy'igifungo kuri buri cyaha, ntibikwiye gufatwa nkaho ari ugusenya umuryango kuko igihano cy'igifungo giteganyijwe ku byaha bivugwa muri iyi ngingo, ndetse no ku bindi byaha, cyemewe n'amategeko kandi gitangwa hagamiye guhana no gukumira. Kuba ubusambanyi, ubushoreke no guta urugo byaragizwe ibyaha, ntibigomba gufatwa nk'ibibangamiye ubwisanzure bw'umuryango, kuko nkuko byasobanuwe, kuba uhamwe n'icyo cyaha ashobora guhanishwa igifungo, bizitira ubwisanzure bwe ariko ku mpamvu zumvikana kandi bigamije gukumira ihungabanya ry'umuryango.

c. Kubangamira ubwiyunge no kubabarirana hagati y'abashakanye

[49] Indi impamvu itangwa na Mugisha Richard asaba ko ingingo ya 136 iteganya icyaha cy'ubusambanyi, iya 138 iteganya icyaha cy'ubushoreke, n'iya 139 iteganya icyaha cyo guta urugo zivaho, nuko asanga zibangamira ubwiyunge no kubabarirana hagati y'abashakanye.

[50] Ingingo ya 136 y'Itegeko N°68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, iteganya ko gukurikirana ibyaha byavuzwe mu gika kibanziriza iki, bidashobora kuba hatareze uwahemukiye mu bashyingiranywe. Kuba gukurikirana ibi byaha bigomba kubanzirizwa nuko uwahemukiye atanga ikirego, Urukiko rusanga bitanga umwanya wo kuba abashyingiranywe bakwiyunga, cyangwa se uwakorewe icyaha akababarira uwakimukoreye, icyo gihe ntihabeho ikurikiranacyaha.

[51] Uretse no kuba ibyo byaha bikurikiranwa aruko yabanje gutanga ikirego, uwahemukiye amategeko amwemerera gusaba guhagarika ikurikirana ry'urubanza, aho rwaba rugeze hose, iyo yisubiyeho akareka ikirego cye. Ibi bigaragaza ko inzira y'ubwiyunge no kubabarirana yagutse hagati y'uwakorewe icyaha n'uregwa kugikora kuko niba batiyunge cyangwa batababariranye mbere y'ikurikiranacyaha, bemerewe kubikora n'urubanza rwaratangiye. Kuba urubanza rushobora gukomeza kugeza no guhanwa k'umwe mu bashyingiranywe, byerekana ko ubwiyunge no kubabarirana hagati yabo biba byanze biturutse ku zindi mpamvu zitandukanye, ariko urubuga rwo kubikora amategeko yararuteganyije.

[52] Ku bindi byaha byinshi, nta bubasha uwakorewe icyaha agira bwo gutangiza ikurikiranacyaha no guhagarikisha urubanza aho rwaba rugeze hose. Ndetse n'ubwiyunge no kubabarirana hagati y'uwakoze icyaha n'uwagikorewe, iyo byabayeho ntibihagarika ikurikiranacyaha, urugero gufata ku ngufu cyangwa ihohotera ry'umwana rishingiye ku gitsina. Urukiko rurasanga ahubwo uko Itegeko riteganya gukurikirana icyaha cy'ubusambanyi, icyaha cy'ubushoreke, n'icyo guta urugo bitanyuranyije no kubabarirana mu

⁶ Bizimana Simon na Kayumba Charles, Inkoranyamagambo Iciriritse, 2010 p. 410.

muryango. icyakora, Urukiko rusanga hari ibika by'ingingo ya 136, iya 138 n'ya 139 bibangamiye ubwiyunge no kubabarirana hagati y'abashakanye. Urukiko rusanga ku bijyanye n'ikurikirana ry'icyaha cy'ubusambanyi, icy'ubushoreke n'icyo guta urugo, hariho ibice bibiri binyuranye bishobora no kuvuguruzanya.

[53] Nkuko biteganywa n'ingingo ya 136 n'ya 140 z'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganywa ibyaha n'ibihano muri rusange, gukurikirana icyaha cy'ubusambanyi, icy'ubushoreke n'icyo guta urugo ntibishobora kuba hatareze uwahemukiwe mu bashyingiranywe. Izo ngingo ziha ububasha kandi uwahemukiwe bwo gusaba guhagarika ikurikirana ry'urubanza, aho rwaba rugeze hose, iyo yisubiyeho akareka ikirego cye. Nubwo izi ngingo zemerera uwahemukiwe guhagarika urubanza aho rwaba rugeze hose, iyo dosiye yarangije kuregerwa urukiko cyangwa gufatwaho icyemezo, uwahemukiwe ntaba agifite ububasha busesuye bwo guhagarikisha urubanza.

[54] Nkuko biteganywa n'ingingo ya 136, igika cya kane y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganywa ibyaha n'ibihano muri rusange iyo dosiye yarangije kuregerwa urukiko cyangwa gufatwaho icyemezo, kwisubiraho ntibihita bihagarika isuzumwa ry'urubanza cyangwa irangiza ryarwo. Umucamanza arabisuzuma akaba yabyemera cyangwa akabyanga akanasobanura impamvu. Ibikubiye mu gika cya kane cy'ingingo ya 136, bisa neza n'ibikubiye mu gika cya nyuma cy'ingingo ya 140 irebana n'ikurikirana ry'icyaha cy'ubushoreke n'icyo guta urugo. Muri ibi bika byombi, bigaragara ko umucamanza ashobora kwanga guhagarikisha urubanza bisabwe n'uwahemukiwe.

[55] Igice cya mbere giha uburenganzira busesuye uwahemukiwe mu bashyingiranywe ushaka guhagarikisha ikurikiranacyaha, igice cya kabiri cyimurira ubwo bubasha ku mucamanza ushobora no kubyangira nkuko itegeko ribimuhera ububasha. Urukiko rurasanga ariko icyo gice cya kabiri kibangamiye uburenganzira bw'uwahemukiwe mu bashakanye ushaka guhagarika ikurikirana ry'urubanza ku mpamvu we yihitiyemo. Bityo, icyo gika cya kane cy'ingingo ya 136, y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganywa ibyaha n'ibihano muri rusange, kikaba kigomba kuvaho kuko nta mpamvu yo kubaho kwacyo. Niba uwahemukiwe yarahawe ububasha bwo guhagarika ikurikiracyaha, yabikora mu bwisanzure nta kimuzitira. Igika cya gatanu cy'iyi ngingo nacyo kigaruka ku birebana no kuba Umucamanza yakwemerera uwahemukiwe ko yahagarika ikurikirana ry'urubanza, cyavaho kuko gishingiye ku gika cya kane cyavanyweho. Ibirebana no kureka urubanza cyangwa irangiza ryarwo bigira ingaruka no ku wakoranye icyaha n'uregwa, bikajya ku gika cya gatatu, mu rwego rwo kugira ngo hadasigara icyuho mu itegeko.

[56] Urukiko rw'Ikirenga, rushingiye ku bisobanuro byatanzwe mu bika bibanza, rusanga ingingo ya 136, 138, 139 z'Itegeko N°68/2018 ryo ku wa 30/08/2018 riteganywa ibyaha n'ibihano muri rusange, zitanyuranye n'ingingo ya 18 y'Itegeko Nshinga. Nkuko byasobanuwe, zifata ubusambanyi, ubushoreke, no guta urugo nk'ibyaha bihanishwa igifungo, ariko bikaba bitabangamiye ubwisanzure bw'umuryango, nta n'ubwo bigira ingaruka zo kuwusenywa. Uburyo kandi ibyo byaha bikurikiranwamo, ntibubangamiye ubwiyunge no gusabana imbabazi hagati y'abashakanye uretse mu gace ka kane n'aka gatanu tw'ingingo ya 136. Urukiko rusanga izi ngingo zishyira mu bikorwa inshingano ya Leta yo kurengera umuryango.

ii. Kumenya niba ingingo ya 154 y'Itegeko riteganywa ibyaha n'ibihano muri rusange iteganywa icyaha cyo gusebya mu ruhame imihango y'idini, inyuranyije n'ingingo ya 38 y'Itegeko Nshinga yerekeye ubwisanzure bw'itangazamakuru, ubwo kugaragaza ibitekerezo n'ubwo guhabwa amakuru

[57] Mugisha Richard avuga ko ingingo ya 154, iteganywa ko umuntu wese usebya mu ruhame imihango y'idini, ibimenyetso byaryo n'ibikoreshe by'imihango yaryo akoresheje ibikorwa, amagambo, ibimenyetso, inyandiko, amarenga cyangwa ibikangisho abigiriye aho imihango y'idini igenewe gukorerwa cyangwa isanzwe ikorerwa, aba akoze icyaha. Ko rero ibiteganywa n'iyi ngingo bidasobanutse neza ku buryo ishobora gukoreshwa nabi mu gukurikirana uwakoze ibyo bikorwa kandi ko bibangamira uburenganzira bw'itangazamakuru no kugaragaza ibitekerezo.

[58] Me Nkundabarashi Moïse na Me Kabasinga Florida, bunganira Mugisha Richard, bavuga ko ingingo ya 154 ishobora kubangamira ubwisanzure bw'itangazamakuru, no gutanga ibitekerezo ku madini n'imikorere yayo, abanyamakuru bagatinya kugira icyo bavuga ku madini kugirango badakurikiranwa.

[59] Me Kabibi Speçiose nk'Intumwa ya Leta, avuga ko kuba bimwe mu biri mu ngingo ya 154 bidasobanutse atari impamvu yatuma itegeko cyangwa iyo ngingo yose ivaho, ahubwo ko ryasobanurwa (interpretation), kandi ko ibyaha bivugwa muri iyo ngingo bitareba abanyamakuru gusa, kuko itegeko rivuga "... umuntu wese...".

[60] Me Musore Gakunzi Valery uhagarariye ARJ (Ihuriro ry'Abanyamakuru n'abandi bakora mu itangazamakuru mu Rwanda) avuga ko ingingo ya 154, yirengagiza uburenganzira bw'abantu ku myemerere yabo, ku buryo ibyo iteganya byatuma abantu badatanga ibitekerezo ku myemerere y'abantu. Avuga ko hari abumva ubwisanzure bwo kugaragaza ibitekerezo bugomba gutezwa imbere kubera ko ari ishingiro rya demokarasi, ariko hakaba n'abandi bumva ko n'ubwisanzure mu myemerere bugomba kurindwa mu buryo bwihariye butavogerwa n'ubwisanzure bwo kugaragaza ibitekerezo.

[61] Akomeza avuga ko gusebya imihango y'idini bireba idini muri rusange n'imyizerere yaryo, ko atari ugusebya umuntu ku giti cye mu cyubahiro cye, bityo, kubera ko uburenganzira n'ubwisanzure ari iby'umuntu atari iby'idini, akaba nta mpamvu yatuma gusebya mu ruhame imihango y'idini biba icyaha mu gihe hubahirijwe ishyirwa mu bikorwa ry'ubwisanzure mu kugaragaza ibitekerezo. Avuga ko gushyiraho amategeko ahana ku munyamakuru watangaje inkuru cyangwa wagaragaje ibitekerezo bye byubaka, byaba ari ukwivanga mu mikorere y'itangazamakuru muri rusange, kandi ibyo binyuranyije n'ingingo ya 38 y'Itegeko Nshinga rya Repubulika y'u Rwanda, ahubwo ko umuntu cyangwa umuryango ufite ubuzima gatozi, wakumva ko itangazamakuru cyangwa umunyamakuru yamuharabitse, yakwiyambaza inzira y'imbenezamubano kugira ngo arenganurwe ahabwa indishyi.

[62] Denis Bikesha, Ruvebana na Yves Sezirahiga, mu izina ry'Ishuli ryigisha amategeko muri Kaminuza y'u Rwanda, bavuga ko ibiteganywa n'ingingo ya 154 bidasobanutse neza, kuko iyo ngingo idasobanura idini icyo aricyo ndetse n'aho imihango y'idini igenewe gukorerwa cyangwa isanzwe ikorerwa aho ariho, bikumvikanisha ko abantu barengana mu gihe iyi ngingo yaguma uko iri ubu, kuko hagombye gusobanurwa icyo idini aricyo kugira ngo n'imihango yaryo ibe yasobanuka. Ko rero iyo ibigize icyaha bidasobanutse igikorwa gifatwa nk'aho atari icyaha, ihame rya '*legal certainty*' rikubiye mu ihame ry'uko ntawe uhanirwa igikorwa kitari icyaha rikaba rigomba kubahirizwa.

[63] Ingingo ya 38 y'Itegeko Nshinga igira iti: "ubwisanzure bw'itangazamakuru, ubwo kugaragaza ibitekerezo n'ubwo guhabwa amakuru buremewe kandi bwubahirizwa na Leta. Ubwisanzure bwo kugaragaza ibitekerezo n'ubwo guhabwa amakuru ntibugomba kubangamira ituze rusange rya rubanda n'imyifatire mbonezabupfura, ukurengera uruburiko n'abana, n'uburenganzira bw'umwenehugu bwo kugira icyubahiro n'agaciro, ubwo kutagira uwivanga mu mibereho ye bwite n'iy'umuryango we. Uko ubwo bwisanzure bukoreshwa n'iyubahirizwa ryabwo biteganywa n'amategeko".

[64] Ingingo ya 154 y'Itegeko N°68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange iteganya ko: "umuntu wese usebya mu ruhame imihango y'idini, ibimenyetso byaryo n'ibikoresho by'imihango yaryo akoresheje ibikorwa, amagambo, ibimenyetso, inyandiko, amarenga cyangwa ibikangisho abigiriye aho imihango y'idini igenewe gukorerwa cyangwa isanzwe ikorerwa, aba akoze icyaha. Iyo abihamijwe n'urukiko, ahanishwa igifungo kitari muni y'iminsi cumi n'itanu (15) ariko kitageze ku mezi atatu (3) n'ihazabu y'amafaranga y'u Rwanda atari muni y'ibihumbi ijana (100.000 Frw) ariko atarenze ibihumbi magana abiri (200.000 Frw) cyangwa kimwe gusa muri ibyo bihano".

[65] Ingingo ya 38 y'Itegeko Nshinga yavuzwe haruguru ishyiraho ihame ryuko ubwisanzure bw'itangazamakuru, ubwo kugaragaza ibitekerezo n'ubwo guhabwa amakuru bwemewe kandi bwubahirizwa na Leta. Ishyiraho nirindi hame ry'uko ubwo bwisanzure hari ibyo butagomba kubangamira. Ibigize ihame ry'ubwisanzure bw'itangazamakuru, ubwo kugaragaza ibitekerezo n'ubwo guhabwa amakuru

bigaragara mu ngingo ya 19 y'Itangazo Mpuzamahanga ku Burenganzira bwa Muntu ryo 1948 (*Universal Declaration of Human Rights*)⁷, iyo ngingo iteganya ibi bikurikira: “*Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers*”. Bivuze ko ubwisanzure bwo kugaragaza ibitekerezo bugizwe no gutanga ibitekerezo ntacyo umuntu yikanga, n'uburenganzira bwo gushaka, kubona no gukwirakwiza amakuru n'ibitekerezo aho ariho hose. Ibi bihura kandi n'ibivugwa n'ingingo ya 19 y'Amasezerano Mpuzamahanga ku Burenganzira mu by'Imbonezambano na Politiki⁸. Bitewe n'uko ubwisanzure bw'itangazamakuru, ubwo kugaragaza ibitekerezo n'ubwo guhabwa amakuru bwemewe n'Itegeko Nshinga, icyo aricyo cyose harimo n'itegeko cyangwa ingingo yaryo, cyabubangamira kiba kinyuranyije naryo.

[66] Mu gukoresha uburenganzira buvuzwe mu gika kibanziriza iki, umuntu ashobora gutanga ibitekerezo ku mihango y'idini, ibimenyetso, n'ibikoresho by'imihango yaryo. Ndetse umuntu akaba anafite uburenganzira bwo gushaka, kubona no gukwirakwiza amakuru n'ibitekerezo mu ruhame birebana n'imihango y'idini, ibimenyetso, n'ibikoresho by'imihango y'idini akaba yanabinenga mu buryo bushobora kudashimisha ababishinzwe, ntacyo yikanga, apfa kudakora ibibujijwe n'ingingo ya 38 y'Itegeko Nshinga yavuzwe haruguru.

[67] Itegeko N°68/2018 ryo ku wa 30/08/2018 mu ngingo yaryo ya 154, rihana igikorwa cyo gusebya mu ruhame imihango y'idini, ibimenyetso, n'ibikoresho by'imihango yaryo. Rinavuga ko gusebanya bishobora kuba byabaye mu bikorwa, mu magambo, ryokoresheje ibimenyetso, inyandiko n'amarenga. Urukiko rukurikije ibyanditswe mu ngingo ya 154, rusanga bibangamira uburenganzira bwo gushaka, kubona no gukwirakwiza amakuru, kugaragaza no gutanga ibitekerezo mu ruhame birebana n'imihango y'idini, ibimenyetso, n'ibikoresho by'imihango yaryo kuko uwashaka kubikora, yakwikanga ko yakurikiranwaho icyaha cyo gusebya giteganywa n'ingingo ya 154, kandi nkuko byibukijwe hejuru ubwisanzure bw'itangazamakuru, ubwo kugaragaza ibitekerezo n'ubwo guhabwa amakuru bwemewe n'Itegeko Nshinga, ntibugomba kubangamirwa n'icyo aricyo cyose.

[68] Ubwisanzure bw'itangazamakuru, ubwo kugaragaza ibitekerezo n'ubwo guhabwa amakuru ku birebana n'imihango y'idini, ibimenyetso, n'ibikoresho by'imihango yaryo, ntibugomba kuzitirwa no gukurikirana ushatse kugira icyo avuga ku idini. Ibi kandi ninabyo byasabwe n'Akanama k'Uburenganzira bwa Muntu mu Muryango w'Abibumbye, (*UN Human Rights Committee*) muri 2011, kasobanuye ibirebana n'ubwisanzure bwo kugaragaza ibitekerezo, kageze ku birebana n'amadini, kavuga ko bidakwiye kubuza cyangwa guhana abanenga abayobozi b'amadini cyangwa abanenga imyizerere y'idini.

[69] Ako kanama kabivuze muri aya magambo: “Prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant, except in the specific circumstances envisaged in article 20, paragraph 2, of the Covenant. Such prohibitions must also comply with the strict requirements of article 19, paragraph 3, as well as such articles as 2, 5, 17, 18 and 26. Thus, for instance, it would be impermissible for any such laws to discriminate in favour of or against one or certain religions or belief systems, or their adherents over another or religious believers over non-believers. **Nor would it be permissible for such prohibitions to be used to prevent or punish criticism of religious leaders or commentary on religious doctrine and tenets of faith**”.⁹

[70] Mu rwego rwo gusigasira uburenganzira bw'itangazamakuru n'ubwo guhabwa amakuru, mu mwaka wa 2007 Inteko Ishinga Amategeko y'Umuryango w'Ibihugu by'Iburayi (*Parliamentary Assembly of the Council of Europe*) yatoye umwanzuro usaba ko guhana uwagize icyo avuga, uwanenze ku buryo bifatwa

⁷ U Rwanda rwayashyizeho umukono kandi ruyemeza ku wa 18/09/1962.

⁸ International Covenant on Civil and Political Rights, (ICCPR), entry into force on 23/03/1976. U Rwanda ruyemeza ku wa 12/02/1975 (reba Itegeko Teka No 8/75 ryo ku wa 12/02/1975, Igazeti ya LETA N°5 of 01/03/1975).

⁹ UN Human Rights Committee, General Comment 34 on the International Covenant on Civil and Political Rights, concerning freedoms of opinion and expression. Paragraph 48. July 2011.

nko gutuka ibishingiye ku myizerere y'abantu (*blasphemy*) byavanwa mu mategeko ahana y'ibihugu bigize uwo muryango. Uwo mwanzuro ugira uti: “*The Assembly recommends that the Committee of Ministers ensure that national law and practice are reviewed in order to decriminalise blasphemy as an insult to a religion [...]*”¹⁰.

[71] Ibihugu byinshi byo muri uwo Muryango¹¹ bimaze kuvana mu mategeko ahana yabyo, ingingo ihana gutuka cyangwa kunenga ibishingiye ku myizerere n'idini. Uretse ibihugu byo kuri uwo mugabane, n'ibyo mu yindi migabane nabyo byagiye bivanaho bene izo ngingo. Nko muri Amerika ya ruguru, Canada yavanyeho iyo ngingo ku mugaragaro mu kwa 12 kwa 2018, naho muri Leta Zunze Ubumwe z'Amerika gutuka no kunenga ibishingiye ku myizerere n'idini ntibyigeze bifatwa nk'icyaha gihanwa n'amategeko muri icyo gihugu. Urukiko rurasanga kuvanaho ingingo zihana gusebya no kunenga birebana n'idini mu bihugu bitandukanye byanashoboka mu Rwanda narwo rukavana ingingo nkiyo mu itegeko rihana, mu rwego rwo kurengera uburenganzira ku mitekerereze, ubw'itangazamakuru no guhabwa amakuru. Guhana igikorwa gisebya cyangwa kinenga ibirebana n'idini byiganje cyane cyane mu bihugu bifite Leta ishingiyeye ku idini (*State religion*) kandi Leta y'u Rwanda ntishingiye ku idini nkuko biteganywa n'ingingo ya 4 y'Itegeko Nshinga rya Repubulika y'u Rwanda¹².

[72] Leta ntiyarikwiye kuba ishyiraho amategeko ahana abashebeje imyizerere y'idini kuko muri rusange nta nyungu bifitiye rubanda uretse gusa kuri ayo madini. Ubifiteho ikibazo yabikurikirana mu rubanza mbonezamubano. Nkuko byemejwe mu rubanza *Joseph Burstyn, Inc. v. Wilson*, rwaciwe n'Urukiko rw'Ikirenga rwa Leta Zunze Ubumwe z'Amerika, Leta ntifite inshingano zo kurinda ibyabangamira imyemerere y'amadini binyuze mu byatangajwe ku mugaragaro, mu mvugo cyangwa mu mashusho. Rwabisobanuye muri aya magambo : “*It is not the business of government in our nation to suppress real or imagined attacks upon a particular religious doctrine, whether they appear in publications, speeches or motion pictures*”¹³.

[73] Urukiko rw'Ikirenga ruherye ku bisobanuro bitanzwe mu bika bibanziriza iki, rusanga ingingo ya 154 y'Itegeko riteganyaye ibyaha n'ibihano muri rusange ifata gusebya mu ruhame imihango y'idini, inyuranyije n'ingingo ya 38 y'Itegeko Nshinga kuko ibangamiye ubwisanzure bw'itangazamakuru, ubwo kugaragaza ibitekerezo n'ubwo guhabwa amakuru.

iii Kumenya niba ingingo ya 233 y'Itegeko N°68/2018 ryo ku wa 30/08/2018 riteganyaye ibyaha n'ibihano muri rusange inyuranyije n'ingingo ya 15 n'ya 38 z'Itegeko Nshinga rya Repubulika y'u Rwanda

[74] Mugisha Richard avuga ko ingingo ya 233 inyuranyije n'Itegeko Nshinga mu ngingo zaryo za 15 na 38 kuko ivangura harebwe abo irengera kandi ko ibangamiye ubwisanzure bwo gutangaza amakuru, kuyatara no gutanga ibitekerezo. Avuga kandi ko adashyigikiye gusebanyaye cyangwa gukoza isoni umuntu uwo ariwe wese, ahubwo ko icyo yifuzaga aruko byavanwa mu mategeko nshinjabyaha kuko hari izindi nzira zo kurenganura uwasebejwe cyangwa uwatutswe ziri mu mategeko arengera abanyamakuru, aho uwareganyijwe ashobora kurengera inkiko z'imbonezamubano asaba indishyi.

[75] Me Nkundabarashi Moïse na Me Kabasinga Florida, bunganira Mugisha Richard, bavugaga ko hari amasezerano atandukanye u Rwanda rwasinye avuga ko umuntu wese afite uburenganzira bwo gutanga ibitekerezo uko bimeze kose mu gihe atabangamiye isura nziza y'abandi. Bavugaga ko hari ibyazitira uburenganzira bwo gutanga ibitekerezo no gutanga amakuru, ariko ko ingingo ya 233 ntaho ihurira nibyo byo kuzitira uburenganzira biteganyijwe mu masezerano mpuzamahanga kuko ubona muri rusange ibuza abaturage ndetse n'itangazamakuru gutanga ibitekerezo binenga abayobozi bavugaga muri icyo ngingo.

¹⁰ Recommendation 1805 (2007) of the Parliamentary Assembly of the Council of Europe

¹¹ Sweden muri 1970, Norway muri 2015, Netherlands muri 2014, Iceland muri 2015, Malta muri 2016, n'ibindi

¹² Iyo ngingo ivugaga ko: “Leta y'u Rwanda ni Repubulika yigenga, ifite ubusugire, ishingiyeye kuri demokarasi, igamije guteza imbere Abanyarwanda kandi ntishingiye ku idini [...]”.

¹³ U.S. Supreme Court , *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495 (1952)

[76] Me Kabibi Speçiose, Intumwa ya Leta, avuga ko ibiteganywa n'ingingo ya 233 bitabangamiye ubwisanzure n'uburenganzira bw'abanyamakuru kuko ubwisanzure bwabo budakwiye kubangamira undi munyarwanda. Avuga ko ingingo ya 15 y'Itegeko Nshinga ivuga ibintu 2 aribyo kureshya imbere y'amategeko (*equality before the law*) no kurengerwa n'amategeko mu buryo bungana (*equal protection of the law*), bivuze ko abantu bagomba gufatwa kimwe iyo bari mu bihe bimwe, ariyo mpamvu hari abarengerwa kubera ko bari mu mirimo runaka cyangwa inzego runaka, ko rero ibyo bitavuze ko batarengerwa kimwe n'abandi, cyane cyane ko ikirengerwa ari umurimo cyangwa urwego atari umuntu, kuko iyo avuye kuri uwo murimo, uwugiyeho arengerwa nk'uwari uwuriho.

[77] Asobanura ko kuba abantu bafatwa mu buryo ubu n'ubu kubera ibyiciro barimo bitavuga ko bibangamiye ihame ry'uko abantu bareshya imbere y'amategeko, ahubwo ko ikibazo cyaba ari uko hari abari mu cyiciro kimwe batarengerwa kimwe cyangwa ntibafatwe kimwe kandi mu buryo bumwe. Ko rero kuba hari ibyiciro by'abantu cyangwa abakozi bitandukanye hagomba kuba n'amategeko agenga ibyo byiciro mu buryo bwihariye agenga imiterere n'imigendekere ya buri cyiciro.

[78] Me Musore Gakunzi Valery uhagarariye ARJ (Ihuriro ry'Abanyamakuru n'abandi bakora mu itangazamakuru mu Rwanda) avuga ko mu mategeko agenga itangazamakuru harimo ingingo ziteganywa uburyo uburenganzira bukoreshwa, uburyo abanyamakuru bagenzurwa hagendewe kugira ngo icubahiro cy'umuntu kitangizwa, ndetse n'umunyamakuru wabirenzeho akaba yashyikirizwa inkiko mbonezamubano.

[79] Asobanura ko ingingo ya 233 ibuza ubwisanzure bw'Itangazamakuru n'ubwo gutanga ibitekerezo kubera ko ituma umunyamakuru wakwandika inkuru ku miyoborere itari myiza ku muyobozi cyangwa undi wese ushinzwe umurimo rusange byakwitwa icyaha. Avuga ko umuntu ufite umurimo rusange atareka kwandikwaho niba ntacyo yikeka, kandi ko Itangazamakuru mu rwego rwo kurwanya ikoresheya nabi ry'umutungo wa Leta nta kundi byakorwa hatabayeho kuvuga amakuru aba yabonetse mu buryo amategeko yemera n'ubwo byaba bibangamiye inyungu bwite z'abanditsweho. Avuga ko ingingo ya 233 ituma abantu baba bakekwaho imyitwarire mibi idakwiye kuranga abakozi ba Leta cyangwa abashinzwe umurimo rusange, batagira icyo bavugwaho cyangwa bandikwaho.

[80] Asobanura ko ingingo ya 233 igaruka ku kintu gikomeye cyane cy'ibishushanyo, kuko gushushanya umuntu ubwabyo atari ikibazo kandi ko bikorwa mu nyungu rusange, ku buryo uwakumva yasebejwe yabiregera mu nkiko mbonezamubano asaba indishyi z'akababaro, kuko gufunga umuntu ngo yasebeje undi icyubahiro cye aba atagisubijwe, ahubwo ko yagisubizwa aregeye indishyi ku makosa yakorewe (action civile).

[81] Denis Bikeshya, Ruvebana na Yves Sezirahiga, bavuga ko ingingo ya 233 idasobanura itandukaniro hagati y'igihe umwe mu bavugwa muri iyo ngingo akora umurimo rusange n'igihe biturutse kuri uwo murimo, ko kandi idasobanura niba abarindwa muri iyo ngingo ari abakozi ba Leta bose aho bava bakagera, ndetse ko itanasobanura icyo gukoza isoni bisobanuye, ariyo mpamvu bavuga ko iyi ngingo inyuranya n'ihame ry'uko amategeko ahana agomba kuba asobanutse (principle of legal certainty).

[82] Bavuga ko iyi ngingo itege urujijo kuko mu bantu irengera harimo "umuntu wese ushinzwe umurimo rusange w'Igihugu", kandi kumenya uyu muntu uwo ariwe bigoye kuko abakozi bose ba Leta badashinzwe umurimo rusange dore ko no mu bikorera harimo abakora imirimo ifitiye abaturage akamaro. Bavuga kandi ko itegeko rivuga igihe umuntu ari mu kazi, hakibazwa mu gihe yaba ari mu nzira agiye gukorera kure ariko ataragera ku kazi umuntu akamukoza isoni byaba byo bitari mu byo itegeko rihana, hakibazwa kandi n'ukuntu umuntu yakozwa isoni n'umurimo ashinzwe. Ndetse ko n'igikorwa cyo gukoza isoni ubwacyo kigoye gusobanura kuko gishingiye ahanini ku buryo uwagikorewe agifata-niba kimukoza isoni cyangwa kitazimukoza (subjectively determined). Bityo kuba iyi ngingo idasobanutse kandi ihame ari uko amategeko ahana agomba kuba asobanutse, ikaba ifatwa nk'aho itariho mu mategeko ahana, cyane cyane ko ibangamiye ihame ryo kwishyira no kwizana mu gutanga ibitekerezo (freedom of expression).

[83] Bakomeza bavuga ko ibiteganyijwe muri iyi ngingo bigaragaza ko igamije kurengera igice kimwe cy'abantu bakora mu nzego za Leta, ibyo bikaba binyuranye n'ihame ry'uko abantu bose bangana imbere y'amategeko kandi itegeko rigomba kubarengera kimwe. Basobanura ko iyo bayisesenguye basanga irengera igice kimwe cy'abantu, abakozi ba Leta bari mu mirimo yabo, ariko abandi bari mu mirimo yabo bwite, nk'abayobozi bibigo byigenga, ntibarengere. Bavuga ko kuba ivuga gusa abayobozi, abashinzwe umutekano cyangwa undi wese ushinzwe umurimo rusange w'Igihugu, bivuze ko undi wese utari muri abo (abakozi bikorera), igikorwa gikoza isoni kimukorewe atari icyaha, ariyo mpamvu bavuga ko inyuranyije n'ihame ry'uko abantu bareshya imbere y'amategeko kandi barengerwa ku buryo bumwe, bikumvikanisha ko hari ukuvangura abantu hashingiwe ku cyo bakora.

UKO URUKIKO RUBIBONA

a) Kuba ingingo ya 233 yaba itarengera abantu mu buryo bumwe

[84] Ingingo ya 15 y'Itegeko Nshinga rya Repubulika y'u Rwanda iteganya ko: "Abantu bose barareshya imbere y'amategeko. Itegeko ribarengera ku buryo bumwe".

[85] Ingingo ya 233 y'Itegeko N°68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange iteganya ko: "Umuntu wese ukoza isoni mu magambo, mu bimenyetso cyangwa ibikangisho, inyandiko cyangwa ibishushanyo, umwe mu bagize Inteko Ishinga Amategeko mu gihe akora umurimo yatorewe cyangwa biturutse kuri uwo murimo, umwe mu bagize Guverinoma, abashinzwe umutekano cyangwa undi wese ushinzwe umurimo rusange w'igihugu mu gihe akora umurimo ashinzwe cyangwa ari wo biturutseho, aba akoze icyaha [...]".

[86] Mugisha Richard asaba ko ingingo ya 233 yavaho kuko asanga idafata abantu ku buryo bumwe, kandi ko irengera abantu bamwe babarizwa mu mirimo ya Leta, bityo ko inyuranye n'Itegeko Nshinga mu ngingo yaryo ya 15. Asanga kandi ingingo ya 233 inyuranye n'ingingo 38 y'Itegeko Nshinga kuko yaba ibangamiye ubwisanzure bw'itangazamakuru, ubwo kugaragaza ibitekerezo n'ubwo guhabwa amakuru.

[87] Umutwe w'ingingo ya 233 wanditse mu buryo bukurikira : "*Gukoza isoni abayobozi b'igihugu n'abashinzwe umurimo rusange w'Igihugu*". Nkuko byanditse muri uyu mutwe, iyi ngingo igamije guhana abakoza isoni abari mu cyiciro cy'abayobozi b'igihugu n'abashinzwe umurimo rusange w'Igihugu, ikaba ntacyo ivuga ku gukoza isoni abatari muri ibyo byiciro. Bivuze ko undi muntu utari muri iki cyiciro, aramutse akojewe isoni, adashobora kurengerwa binyuze mu nzira y'amategeko mpanabyaha kuko gukoza isoni biba icyaha mu mategeko y'u Rwanda, bishingiye gusa ku kuba uwakorewe icyaha ari mu cyiciro cy'abayobozi b'igihugu n'abashinzwe umurimo rusange w'Igihugu.

[88] Ingingo ya 233 igaragara nk'ishingiye ku cyiciro cy'abantu bitewe n'umurimo bakora. Urukiko rurasanga ariko nta mpamvu yo gushyiraho ingingo nk'iyi yatuma igikorwa kimwe kiba icyaha ku bantu bamwe bitewe nuko cyakorewe abari mu mirimo iyi n'iyi, nyamara ntikibe icyaha ku bandi. Iryo tandukaniro ntabwo ari ngombwa, cyane ko nubwo umuntu yaba abarizwa mu bakozi bavugwa mu ngingo ya 233, hari n'abandi iyo ngingo itavugaga baba abikorera, abakorera ibigo n'imiryango bidashamikiye kuri Leta, nabo bashobora gukozwa isoni bikangiza icyubahiro cyabo bitewe n'imyanya barimo, ariko ababikoze ntibakurikiranwe bitewe n'imiterere y'itegeko.

[89] Gutandukanya abantu ubwabyo ntabwo ari ivangura cyangwa kutareshyeshya abantu imbere y'amategeko. Bishobora gukorwa iyo hari impamvu igaragara irengera abari mu cyiciro cy'abanyantegere nke. Niyo impamvu akenshi amategeko arengera mu buryo bwihariye abagore n'abana.¹⁴ Impamvu yabyo

¹⁴ Urugero n'itegeko N° 54/2011 ryo kuwa 14/12/2011 ryerekeye uburenganzira bw'umwana n'uburyo bwo kumurinda no kumurengera. N'ingingo ya 10 agace ka 4 y'Itegeko Nshinga iteganya ko "abagore bagira nibura mirongo itatu ku ijana (30%) by'inyanya mu nzego zifatirwamo ibyemezo".

igomba kuba igaragarira buri wese (objective justification or legitimate objective) kandi bikaba biri mu rugero urebye uburyo bwakoreshejwe kugera ku ntego cyangwa ikigamijwe.

[90] Intumwa ya Leta ivuga ko icyo ingingo ya 15 y'Itegeko Nshinga ishatse kuvuga ari uko abantu bagomba gufatwa kimwe iyo bari mu bihe bimwe ko ariko iyo batari mu bihe bimwe hari impamvu badafatwa kimwe. Ibyo nibyo, nyamara ku bijyanye n'uru rubanza ntihagaragajwe impamvu ifatika kandi ya ngombwa ituma ibyiciro by'imirimo ya Leta bivugwa bikwiye kurengerwa mu buryo bwihariye. Icyo Me Kabibi Speçiose avuga n'uko ngo abayobozi n'abandi bavugwa mu ngingo ya 233 bafite umwihariko nka 'vulnerable group' ariko akaba atashoboye gusobanura neza uburyo bari 'vulnerable'.

[91] Ikindi kigaragara, nkuko byavuzwe n'Inshuti y'Urukiko, Kaminuza y'Urwanda Ishami ry'amategeko, n'uko ingingo ya 233 idasobanura neza urebwa nayo ; niba ari abakorera Leta bose cyangwa ari abakozi bo mu nzego zo hejuru gusa. Ingingo ivuga umwe mu bagize Inteko Ishinga Amategeko, umwe mu bagize Guverinoma, abashinzwe umutekano ikongeraho "undi wese ushinze umurimo rusange w'Igihugu". Ibi bikaba bisa n'aho bishatse kuvuga abakora imirimo ya Leta bose, akaba ari nta mwihariko watuma barengerwa kuruta abandi bantu badakorera Leta. Ntibinasobanutse icyo gukoza isoni umuntu mu kazi ke cyangwa bishingiye ku kazi akora bishatse kuvuga. Ibi byatera urujijo abantu ntibamenye neza igihe bashobora kugwa muri icyo cyaha. Bene ayo mategeko anyuraniye n'ihame ry'uko amategeko ahana agomba kuba asobanutse, n'ibikorwa bigize icyaha bikaba bisobanutse (principle of legal certainty). Ibi bisobanurwa neza n'umuhanga mu by'amategeko Tridimas aho avuga ati : *"the principle of legal certainty and legitimate expectation provides an important assertion of the rule of law that those subject to the law must know what the law is so as to plan their action accordingly."*¹⁵

[92] Urukiko rushingiye ku bisobanuro bitanzwe mu bika bibanziriza iki, rusanga ingingo ya 233 y'itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganyaga ibyaha n'ibihano muri rusange inyuranyije n'Itegeko Nshinga mu ngingo yaryo ya 15 iteganyaga ko abantu bose bareshya imbere y'amategeko, ko itegeko ribarengera ku buryo bumwe, kuko iyo ngingo ya 233 ifata abantu mu buryo butandukanye kandi ikaba itabarengera ku buryo bumwe nkuko byasobanurwe hejuru.

b) Kuba ingingo ya 233 yaba ibangamiye ubwisanzure bw'itangazamakuru, ubwo kugaragaza ibitekerezo n'ubwo guhabwa amakuru

[93] Nkuko biteganywa n'ingingo ya 38 y'Itegeko Nshinga, ubwisanzure bw'itangazamakuru, ubwo kugaragaza ibitekerezo n'ubwo guhabwa amakuru buremewe kandi bwubahirizwa na Leta. Ku rundi ruhande, ingingo ya 233 y'itegeko N°68/2018 ryo ku wa 30/08/2018 riteganyaga ibyaha n'ibihano muri rusange, iteganyaga ko umuntu wese ukoza isoni mu magambo, mu bimenyetso cyangwa ibikangisho, inyandiko cyangwa ibishushanyo, abayobozi b'igihugu n'abashinzwe umurimo rusange w'Igihugu bavugwa muri icyo ngingo abakoze icyaha.

[94] Ingingo ya 19 y'Itangazo Mpuzamahanga ku Burenganzira bwa Muntu (*Universal Declaration of Human Rights*)¹⁶, isobanura ibigize uburenganzira ku gutanga ibitekerezo n'uburenganzira ku makuru. Ibibvugaga muri aya magambo: *"everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers"*.

[95] Ibirebana n'ubwo burenganzira biteganywa kandi n'ingingo ya 19 y'Amasezerano Mpuzamahanga ku Burenganzira mu by'Imbonezambano na Politiki¹⁷. Iyo ngingo ibivugaga mu buryo bukurikira:

Everyone shall have the right to hold opinions without interference.

¹⁵ T. Tridimas, *The General principles of EC Law* (OUP, 2nd edn, 206)

¹⁶ U Rwanda rwashyize umukono kuri ayo masezerano ku wa 18/09/1963

¹⁷ International Covenant on Civil and Political Rights, (ICCPR), entry into force on 23/03/1976. U Rwanda ruyemeza ku wa 12/02/1975 (reba Itegeko Teka No 8/75 ryo ku wa 12/02/1975, Igazeti ya Leta n° 5 of 01/03/1975)

Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary :

- a). For respect of the rights or reputations of others;
- b). For the protection of national security or of public order (ordre public), or of public health or morals.

[96] Nkuko biri mu ngingo za 19 z'Amasezerano yavuzwe mu bika bibiri bibanziriza iki, umuntu wese afite uburenganzira bwo kugaragaza ibitekerezo ntacyo yikanga. Ubwisanzure bwo kugaragaza ibitekerezo bugizwe no gushaka no guhabwa amakuru, kugaragaza ibitekerezo byose nta nkomyi binyuze mu bitangamakuru bikoresha amajwi, ibyandika n'ibikoresha ubundi buryo bwose. Amasezerano Mpuzamahanga ku Burenganzira mu by'Imbonezamubano na Politiki, yo yongeraho ko ubwo burenganzira buzitirwa no kubahiriza uburenganzira bw'abandi, n'umutekano w'igihugu n'ituze rya rubanda.

[97] Urukiko rusanga, ingingo ihana gukoza isoni mu magambo, mu bimenyetso cyangwa ibikangisho, inyandiko cyangwa ibishushanyo, ibangamiye ubwo bwisanzure kuko hari uwatinya ko aramutse agaragaje ibitekerezo uko abyumva cyangwa agatangaza amakuru ku bikorwa n'abagize Inteko Ishinga Amategeko, abagize Guverinoma, abashinzwe umutekano cyangwa undi wese ushinzwe umurimo rusange w'Igihugu, yakurikiranwaho icyaha cyo gukoza isoni abayobozi b'igihugu n'abashinzwe umurimo rusange w'Igihugu baramutse batishimiye ibyo bitekerezo cyangwa amakuru. Ubwisanzure bwo kugaragaza ibitekerezo, ubwo gutangaza no guhabwa amakuru ku bikorwa n'abayobozi b'igihugu n'abashinzwe umurimo rusange w'Igihugu bavugwa mu ngingo ya 233, ntibukwiye kubangamirwa no kwikanga ko ibyo umuntu yabavugaho cyangwa yabatangazaho byafatwa nko kubakoza isoni.

[98] Ubwisanzure mu kugaragaza ibitekerezo no gutangaza amakuru ku bikorwa n'abayobozi, bushimangira ihame rya demokarasi ryo gukorera mu mucyo no kubazwa inshingano ku byo abayobozi bakorera abaturage. Ibi biri mu byavuzwe n'Akanama k'Umuryango w'Abibumbye gashinzwe uburenganzira bwa Muntu. Ako kanama kabivuze muri aya magambo: "***freedom of expression is a necessary condition for the realization of the principles of transparency and accountability that are, in turn, essential for the promotion and protection of human rights***"¹⁸.

[99] Ingingo ya 4 y'Itegeko Nshinga iteganya ko Leta y'u Rwanda ari Repubulika yigenga, ifite ubusugire, **ishingiye kuri demokarasi** igamije guteza imbere Abanyarwanda kandi ntishingiye ku idini. Iyo ngingo ikomeza ivuga ko ihame shingiro rya Repubulika y'u Rwanda ari: «Ubutegetsi bw'Abanyarwanda, butangwa n'Abanyarwanda kandi bukorera Abanyarwanda ». Ubwisanzure bwo kugaragaza ibitekerezo ni rimwe mu mahame ya Leta igendera kuri demokarasi. Ubwisanzure bwo kugaragaza ibitekerezo ntibugomba kugira abo bugarukiraho. Ibi bihura kandi n'ibyavuzwe n'Urukiko rushinzwe Uburenganzira bwa Muntu mu muryango w'Ibihugu by'Uburayi (***European*** Court of Human Rights) mu rubanza Handyside v. United Kingdom muri aya magambo : "***Freedom of expression constitutes one of the essential foundations of such [democratic] society, one of the basic conditions for its progress and for the development of every man. Subject to Article 10(2), it is applicable not only to "information" or "ideas" that are favorably received or regarded as inoffensive or as a matter of indifference, but also to those that offend shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no "democratic society"***"¹⁹. Ibi bivuze ko amakuru cyangwa ibitekerezo bitagomba kuba ari ibishimisha ubuyobozi cyangwa bidafite abo

¹⁸ United Nations ("UN") Human Rights Committee, General Comment No. 34, Article 19: Freedoms of opinion and expression, CCPR/C/GC/34 (12 September 2011) ("General Comment No. 34"), par. 3.

¹⁹ European Court of Human Rights, Handyside v. United Kingdom, Judgment of 7 Dec. 1976, Series A no. 24

bibangamiye; ahubwo ibitanogeye ubutegetsu na bamwe mu baturage bikwiye kwemerwa. Iyo ibitekerezo by'ingeri nyinshi, ubworoherane no gutekereza byagutse bidahari, demokarasi iba idashoboka. Niyo mpamvu ingingo ihana gukoza isoni abayobozi b'igihugu n'abashinzwe umurimo rusange w'Igihugu, igomba gufatwa ko ibangamiye iryo hame ry'ubwisanzure bwo gutanga ibitekerezo mu gihugu kiyemeje kugendera kuri demokarasi.

[100] Ubwisanzure mu kugaragaza ibitekerezo, gutara no gutangaza amakuru, bugomba gukoreshwa nta bikangisho, nta gutoteza. Akanama gashinzwe uburenzira bwa Muntu (*United Nations Human Rights Committee*) [UNHRC] kemeje ko gutesha umutwe, gukanga, gufunga, gucira urubanza nogufunga umuntu azira ibitekerezo afite, binyuranyije n'ingingo ya 19 y'Amasezerano Mpuzamahanga ku Burenganzira mu by'Imbonezamubano na Politiki yavuzwe haruguru. Kabivuze muri aya magambo: *"The harassment, intimidation or stigmatization of a person, including arrest, detention, trial or imprisonment for reasons of the opinions they may hold, constitutes a violation of article 19²⁰"*. Urukiko rusanga kuba ingingo ya 233 iteganya igihano cy'igifungo k'uwakoza isoni abayobozi b'Igihugu, abashinzwe umutekano n'abashinzwe umurimo rusange w'Igihugu bavugwa muri iyo ngingo, byatuma abantu badatanga ibitekerezo mu bwisanzure kandi bibangamira uburenganzira bwo gusesengura no gutangaza amakuru ku bikorwa n'abo bayobozi.

[101] Urukiko ruherereye ku bisobanuro bitanzwe mu bika bibanziriza iki, rurasanga ingingo ya 233 y'itegeko N°68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, iteganya ko umuntu wese ukoza isoni mu magambo, mu bimenyetso cyangwa ibikangisho, inyandiko cyangwa ibishushanyo, abayobozi b'igihugu n'abashinzwe umurimo rusange w'Igihugu bavugwa muri iyo ngingo, inyuranyije n'ingingo ya 38 y'Itegeko Nshinga iteganya ko ubwisanzure bw'itangazamakuru, ubwo kugaragaza ibitekerezo n'ubwo guhabwa amakuru bwemewe kandi bwubahirizwa na Leta. Kuko nkuko byasobanuwe, ingingo ya 233 ituma abantu badakoresha ubwo bwisanzure kuko baba batinya ko mu gihe hari icyo bavuga cyangwa batangaza ku bantu bavugwa mu ngingo ya 233, bakurikiranwaho icyaha cyo gukoza isoni abayobozi b'igihugu n'abashinzwe umurimo rusange.

c) Kumenya niba ingingo ya 236 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange inyuranyije n'ingingo ya 15 n'ya 38 z'Itegeko Nshinga rya Repubulika y'u Rwanda.

[102] Mugisha Richard avuga ko ingingo ya 236 igateganya ko umuntu wese utuka cyangwa usebya Perezida wa Repubulika, aba akoze icyaha, mu gihe icyo cyaha gishobora kuba urwitwazo mu kubangamira ubwisanzure bw'abanyamakuru, cyane cyane ko icyaha cyo gusebanya kidasobanutse neza. Anavuga ko ingingo ya 236 inyuranye n'ingingo ya 15 y'Itegeko Nshinga kuko itarengera abantu mu buryo bumwe kuko ihana abatuka cyangwa bagasebya umuntu umwe gusa.

[103] Me Kabibi Speçiose nk'Intumwa ya Leta, avuga ko ingingo ya 236 idateganya ibyaha byakorwa n'abanyamakuru ahubwo ko ivuga ibyaha bishobora gukorwa n'umuntu uwariwe wese, ko muri iyo ngingo ntaho bavugaga ko bireba umunyamakuru. Avuga ko ubwisanzure bw'umunyamakuru bugomba kugarukira aho icyubahiro cy'umuyobozi gitangirira, n'umutekano we, kandi ko ingingo ya 236 itabuza kwandika kuri Perezida wa Repubulika ahubwo ibuza kumusebya cyangwa kumutuka.

[104] Me Musore Gakunzi Valery uhagarariye ARJ (Ihuriro ry'Abanyamakuru n'abandi bakora mu itangazamakuru mu Rwanda) avuga ko nabo bemera ko Perezida wa Repubulika kubera inshingano agira agomba kugira imyitwarire irenze abantu bose, ariko ko icyamwandikwaho kitagombye kuba icyaha mu rwego rwo kubahiriza ihame rya 'accountability'. Ko rero kuba icyaha cyo gusebanya cyaravuye mu mategeko ahana, kitagombye kugaruka kuri Perezida wa Repubulika gusa, kuko ingingo ya 161 ihana umuntu wese utuka undi, ko rero kuvuga ko umunyamakuru yanditse kuri Perezida wa Repubulika amusebya, byaba ari nko kuvuga ko ntawemerewe kumwandikaho.

²⁰ Communication No. 414/1990, *Mika Miha v. Equatorial Guinea*, Views adopted on 8 July 1994

[105] Denis Bikeshya, Ruvebana na Yves Sezirahiga, bavugaga ko ingingo ya 236 irebana n'icyaha cyo gutukana cyangwa gusebya Perezida wa Repubulika, iyo ibiyugurwamo bihujwe n'ibiteganywa n'ingingo ya 161 ihana icyaha cyo gutukana, usanga icyaha cyo gutukana gihanwa iyo gikozwe mu ruhame, mu gihe ku birebana n'ingingo ya 236 yumvikanisha ko aho icyo cyaha cyakorerwa hose, bivuze ko niyo abantu 2 baba biherereye, umwe atukana n'undi, yamubeshyera ko yakozwe icyo cyaha akagikurikiranwaho.

[106] Basobanura ko ingingo ya 236 irebana n'icyaha cyo gusebya Perezida wa Repubulika kandi icyaha cyo gusebya cyaravanywe mu mategeko ahana ku bandi bantu, ariyo mpamvu basanga impamvu zatumye icyo cyaha gikurwaho ku bantu bose, zakoresheye no kuri Perezida wa Repubulika kugira ngo hubahirizwe ihame ryo kwishyira no kwizana mu gutanga ibitekerezo harimo n'ubwisanzure bw'Itangazamakuru, cyane cyane ko icyo cyaha cyavanywemo kubera ko gusebya bitari bisobanutse neza. Ko rero ibiteganywa n'ingingo ya 236 binyuranye n'ihame riteganywa n'ingingo ya 15 y'Itegeko Nshinga iteganywa ko abantu bagomba kurengerwa n'itegeko ku buryo bumwe.

UKO URUKIKO RUBIBONA

[107] Ingingo ya 15 y'Itegeko Nshinga rya Repubulika y'u Rwanda iteganywa ko: "Abantu bose barashyamba imbere y'amategeko. Itegeko ribarengera ku buryo bumwe". Iya 38 yaryo igateganywa ibi bikurikira : "Ubwisanzure bw'itangazamakuru, ubwo kugaragaza ibitekerezo n'ubwo guhabwa amakuru buremewe kandi bwubahirizwa na Leta. Ubwisanzure bwo kugaragaza ibitekerezo n'ubwo guhabwa amakuru ntibugomba kubangamira ituze rusange rya rubanda n'imyifatire mbonezabupfura, ukurengera urubiruko n'abana, n'uburenganzira bw'umwenehugu bwo kugira icyubahiro n'agaciro, ubwo kutagira uwivanga mu mibereho ye bwite n'iy'umuryango we. Uko ubwo bwisanzure bukoresheye n'iyubahirizwa ryabwo biteganywa n'amategeko".

[108] Iya 236 y'Itegeko N°68/2018 ryo ku wa 30/08/2018 iteganywa ibyaha n'ibihano muri rusange iteganywa ko: "Umuntu wese utukana cyangwa usebya Perezida wa Repubulika, aba akoze icyaha. Iyo abihamijwe n'urukiko, ahanishwa igifungo kitari muni y'inyuma itanu (5) ariko itarenze imyaka irindwi (7) n'ihazabu y'amafaranga y'u Rwanda arenze miliyoni eshanu (5.000.000 FRW) ariko atarenze miliyoni zirindwi (7.000.000 FRW)".

a) Kuba ingingo ya 236 yaba itarengera abantu ku buryo bumwe

[109] Ingingo ya 236 iteganywa ko gutukana cyangwa gusebya Perezida wa Repubulika ari icyaha, uwo gihamye ahanishwa igifungo kitari muni y'inyuma itanu (5) ariko itarenze imyaka irindwi (7) n'ihazabu y'amafaranga y'u Rwanda arenze miliyoni eshanu (5.000.000 FRW) ariko atarenze miliyoni zirindwi (7.000.000 FRW). Nubwo iyi ngingo ihana uwatutse Perezida wa Repubulika, hari n'indi ngingo y'Itegeko N° 68/2018 ryo ku wa 30/08/2018, ihana umuntu wese utukana undi mu ruhame.

[110] Ingingo ya 161 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 iteganywa ko: "Umuntu **wese utukana undi mu ruhame** aba akoze icyaha. Iyo abihamijwe n'urukiko, ahanishwa igifungo kitari muni y'iminsi cumi n'itanu (15) ariko kitarenze amezi abiri (2);ihazabu y'amafaranga y'u Rwanda atari muni y'ibihumbi ijana (100.000 FRW) ariko atarenze ibihumbi magana abiri (200.000 FRW); imirimo y'inyungu rusange mu gihe kitarenze iminsi cumi n'itanu (15) cyangwa kimwe gusa muri ibyo bihano. [...]". Ingingo ya 161 n'ya 236, zavuzwe mu bika bibanziriza iki, zombi zifata gutukana nk'icyaha. Urukiko rusanga ibyo Mugisha Richard avugaga ko ingingo ya 236 irengera Perezida wa Repubulika gusa, ataribwo kuko nkuko bigaragara mu ngingo ya 161, umuntu wese utukana undi mu ruhame aba akoze icyaha. Muri rusange, gutukana ni icyaha hatitawe ku wabikorewe.

[111] Urukiko rurasanga ariko hari itandukaniro rishingiye ku bihano hagati y'ingingo zivugaga ko gutukana ari icyaha. Utukana undi mu ruhame ahanishwa igifungo kitari muni y'iminsi cumi n'itanu (15) ariko kitarenze amezi abiri (2);ihazabu y'amafaranga y'u Rwanda atari muni y'ibihumbi ijana (100.000 FRW) ariko atarenze ibihumbi magana abiri (200.000 FRW); utukana Perezida wa Repubulika ahanishwa igifungo

kitari muni y'imyaka itanu (5) ariko itarenze imyaka irindwi (7) n'ihazabu y'amafaranga y'u Rwanda arenze miliyoni eshanu (5.000.000 FRW) ariko atarenze miliyoni zirindwi (7.000.000 FRW).

[112] Ibihano bitangwa ku cyaha cyo gutukana bivugwa mu gika kibanziriza iki, biratandukanye. Umwihariko ku gihano ku cyaha cyo gutuka cyangwa gusebya Perezida wa Repubulika, ni uko ari kinini ugereranije n'ibindi bihano biteganywa ku watutse abandi. Ariko, Urukiko ntirwasuzuma niba ingingo ya 236 yavanwaho bitewe nuko iteganya ibihano bitandukanye n'ibiteganywa n'izindi ngingo zihana gutukana kuko ibyo bitaregewe ndetse ntibyanaburanyweho. Urukiko rusanga ariko iryo tandukaniro ku ngano y'ibihano rigomba kugabanywa, igihano giteganywa ku uwatutse Perezida wa Repubulika kikaba kiri mu gaciro (proportionate). Urukiko rurasaba inzego zibishinzwe kwita kuri iki kibazo.

[113] Ikindi gitandukanya ingingo ya 236 n'iya 161, n'uko ihana usebya Perezida wa Repubulika. Gusebya Perezida wa Repubulika no gusebya abakuru b'ibihugu by'amahanga cyangwa ababihagarariye cyangwa abahagarariye imiryango mpuzamahanga mu Rwanda²¹ nibyo byonyine bihanwa mu Rwanda. Gusebya abandi uretse abo bamaze kuvugwa si icyaha, ahubwo uwasebejwe ashobora gutanga ikirego cyo gusaba indishyi. Urukiko rusanga rero ku birebana n'ingingo ya 236 yaregewe, agace kayo karebana n'icyaha cyo gusebanya, itandukanya gusebya Perezida wa Repubulika n'abandi bantu basigaye. Urukiko rusanga ariko, iryo tandukaniro atari ikibazo, kuko rifite icyo rishingiyeho, aricyo urwego rwa Perezida wa Repubulika.

[114] Nkuko byemejwe n'uru Rukiko, mu rubanza N° RS/INCONST/PEN0005/12/CS rwa Uwinkindi Jean rwaciye ku wa 22/02/2013, gushyira abantu mu byiciro ntabwo ari ukubavangura cyane cyane iyo ibyo byiciro byashyizweho hagamijwe kugera ku ntego yumvikana, igaragarira buri wese, ishingiye ku mategeko kandi ibyashingiweho bikaba bifite ireme mu nyungu rusange. Uru Rukiko rwibukije ko ibyo byanavuzwe n'Akanama k'Umuryango w'Abibumbye gashinzwe Uburenganzira bwa Muntu (United Nations Human Rights Committee) mu mwanzuro kafashe mu nama yako ya 37, aho kagize kati : *“finally, the committee observes that not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the covenant”*²². Aha, Urukiko ruragaragaza niba hari impamvu zumvikana zatuma gusebya Perezida wa Repubulika byaba icyaha, ariko gusebya abandi ntibibe icyaha.

[115] Itegeko Nshinga rya Repubulika y'u Rwanda rigaragaza ko Perezida wa Repubulika afite inshingano zitandukanye, iz'ingenzi muri zo ni izi zikurikira:

Ni we Mukuru w'Igihugu (ingingo ya 98)

Ashinzwe kurinda Itegeko Nshinga no kubumbatira ubumwe bw'Abanyarwanda (ingingo ya 98)

Yishingira ko Leta ikomeza kubaho, ubwigenge n'ubusugire bw'Igihugu no kubahiriza amasezerano mpuzamahanga (ingingo ya 98)

Ashinzwe Ubutegetsi Nyubahirizategeko (ingingo ya 97)

Ni Umugaba w'Ikirenga w'Ingabo z'u Rwanda (ingingo ya 108)

Ahagararira u Rwanda mu mibanire yarwo n'amahanga (ingingo ya 111)

Afite uruhare mu ishyingirahamwe ry'amategeko (legislative role). Ashyira umukono ku mategeko kandi akaba anafite ububasha bwo gushyiraho Itegeko Teka, n'Iteka rya Perezida.

[116] Nk'Umukuru w'Igihugu, Perezida wa Repubulika niwe wishyingira, agasigasira ubumwe bw'abenegihugu, akaba n'ishusho (symbol) yabwo; kumusebya byagira ingaruka kuri ubwo bumwe, kuko bishobora gutuma abantu bacikamo ibice biturutse ku byamutangajweho bidafite ukuri. Ushaka kugira icyo

²¹ Reba ingingo ya 218 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange

²² Human Rights Committee, General Comment XVIII, Non-discrimination (1989), www.unhcr.org/refworld/type

atangaza cyangwa anenga kirebana na Perezida wa Repubulika, agomba kwitonda kugirango adatangaza ibimusebya bishobora kuyobya rubanda.

[117] Ishyirwaho rye, ivanwaho rye, uko ashobora gukurikiranwa aramutse akoze icyaha, ubudahangarwa afite nkuko biteganywa n'Itegeko Nshinga bitandukanye n'iby'abandi bayobozi mu Gihugu baba abatorwa cyangwa abashyirwaho. Ibi, byiyongereyeho inshingano afite nkuko zavuzwe mu gika kibanziriza iki, Urukiko rusanga Perezida wa Repubulika yihariye, ku buryo no gushyiraho amategeko yihariye kuri we, yaba amurenge cyangwa amugenga atandukanye n'areba abandi, byumvikana kandi bifite ishingiro. Bityo rero, kuba ingingo ya 236 ifata gusebya Perezida wa Repubulika nk'icyaha, ariko ntibibe icyaha ku wasebya undi muntu, Urukiko rusanga bishingiye ku mwihariko w'inshingano afite kandi bifite ireme.

b) Kuba ingingo 236 yaba izitira ubwisanzure bw' itangazamakuru, ubwo kugaragaza ibitekerezo n'ubwo guhabwa amakuru.

[118] Nkuko byavuzwe mu bika byo hejuru hasesengurwa niba guhana gukoza isoni abayobozi b'igihugu n'abashinzwe umurimo rusange bibangamiye ubwisanzure bw'itangazamakuru, ubwo kugaragaza ibitekerezo n'ubwo guhabwa amakuru, kugaragaza ibitekerezo, guhabwa no gutangaza amakuru ntibikwiye kubangamirwa n'icyo ari cyo cyose. Ubwisanzure bw'itangazamakuru, ubwo kugaragaza ibitekerezo n'ubwo guhabwa amakuru buteganywa n'ingingo ya 19 y'Amasezerano Mpuzamahanga ku Burenganzira mu by'Imbonezamubano na Politiki (ICCPR). Mu mwanzuro wako wa 34 usobanura ibijyanye n'iyo ngingo, Akanama k'Umuryango w'Abibumbye gashinzwe Uburenganzira bwa Muntu, kasabye ibihugu byasinye ayo masezerano ko gusebya bitaba icyaha, kanavuga ko n'igihano cyo gufungwa kitajyanye n'icyo cyaha. Kabivuze muri aya magambo : *“States parties should consider the decriminalization of defamation and, in any case, the application of the criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty. It is impermissible for a State party to indict a person for criminal defamation but then not to proceed to trial expeditiously – such a practice has a chilling effect that may unduly restrict the exercise of freedom of expression of the person concerned and others.*²³ Ni ukuvuga ko kuvanaho icyaha cyo kusebya umukuru w'igihugu bitaraba ihame ku rwego mpuzamahanga. Nkuko byasabwe n'Akanama kavugwa muri iki gika, amategeko ahana gusebya yavaho, ariko igihe agikoreshwa akaba yakorehwa ku bihe bikomeye (serious cases) kandi bikaba bigomba kwitonderwa.

[119] Urukiko rusanga hari itandukaniro ku gusebya Perezida wa Repubulika no gusebya abandi bantu. Ndetse n'ingaruka byagira kuri ibyo byiciro byombi ziratandukanye. Gusebya iyo byakorewe abandi bantu, abo byakorewe bashobora kwifashisha inzira y'imbonezamubano bakaregera guhabwa indishyi. Ubwinshi n'uburemere bw'inshingano za Perezida wa Repubulika nkuko zavuzwe, butuma hatangwa ibitekerezo byinshi bijyanye n'izo nshingano, ndetse hakabaho no gushaka no gutangaza amakuru ajyanye nazo. Mu gihe gutuka cyangwa gusebya Perezida wa Repubulika, byaba bitabaye icyaha gukurikiranwa n'Ubushinjacyaha, byasaba ko yiyambaza inzira y'imbonezamubano kugirango arenganurwe. Urukiko rusanga ibyo byabangamira akazi ke, n'igitinyiro gikwiriye umukuru w'Igihugu, nko kuba yahugira mu gushaka uko arenganurwa, kandi nkuko byavuzwe, afite inshingano ziremereye zimusaba kwitaho.

[120] Gutuka cyangwa gusebya Perezida wa Repubulika kuba ari icyaha, bigomba kureberwa mu kurenge inshingano afite n'abo ahagarariye kurusha kubifata nk'ibyabangamira ubwisanzure bw'itangazamakuru, ubwo kugaragaza ibitekerezo n'ubwo guhabwa amakuru. Urukiko rusanga buri wese agomba gushishoza, mu gutanga ibitekerezo, gushaka no gutanganza amakuru, akabikora ntawe atutse cyangwa ashebeje kuko nkuko na Mugisha Richard yabigarutseho, uretse na Perezida wa Repubulika, gutuka no gusebya umuntu wese ntibikwiye. Ariko kandi gukurikirana ukekweho gusebya Perezida wa Repubulika ntibikwiye kwihutirwa; bikwiye gusuzumanwa ubushishozi bikagaragara ko ari ibintu bikomeye, 'serious case', mbere y'uko ubushinjacyaha buregera urukiko. Igihe ukekwa ashyikirijwe urukiko,

²³ UN Human Rights Committee, General Comment 34, on the International Covenant on Civil and Political Rights, concerning freedoms of opinion and expression. Paragraph 47. July 2011.

ubushinjacyaha bugomba kugaragaza ko ibigize icyaha byuzuye nta gushidikanya (proof beyond reasonable doubt) nkuko bimeze no mu zindi manza nshinjabyaha.²⁴

[121] Ingingo ya 41 y'Itegeko Nshinga iteganya ko: "mu gukoresha uburenganzira n'ubwisanzure, buri wese azitirwa gusa n'itegeko rigamije kwemera no kubahiriza uburenganzira n'ubwisanzure by'abandi ndetse **n'imytwarire iboneye, ituze rusange rya rubanda** n'imibereho myiza muri rusange biranga Igihugu kigendera kuri demokarasi". Nkuko bikubiye muri iyi ngingo, mu gukoresha ubwisanzure buri wese azitirwa n'itegeko rifite icyo rigamije nk'imytwarire iboneye n'ituze rusange bya rubanda. Urukiko rusanga kuba hari ingingo y'itegeko ihana usebya Perezida wa Repubulika, biri muri uwo murongo wo kurengera ituze rusange hagendewe ku kuba ahagarariye rubanda (abaturage bose).

[122] Kuba gutuka cyangwa gusebya Perezida wa Repubulika ari icyaha, si umwihariko w'u Rwanda. Ibihugu bitandukanye bizwi ko bigendera ku mahame ya demokarasi, bifite mu mategeko yabyo, ingingo zihana utuka cyangwa usebya Perezida, cyangwa undi wese ufatwa nk'Umukuru w'Igihugu, bitewe n'imitegekere ya buri gihugu. Ibyo Bihugu ni nka Germany, Greece, Iceland, Italy, Netherlands, Portugal, Spain, Sweden n'ibindi. Ariko muri ibi bihugu, nkuko bigaragazwa n'inyandiko ya Organization for Security and Cooperation in Europe, ibihano bitoya (minimum) n'ibinini (maximum) ku mukuru w'igihugu biri muni y'ibiteganywa mu ngingo ya 236.²⁵

[123] Kubera impamvu zisobanuwe mu bika bibanziriza iki, Urukiko rurasanga kugira icyaha gutuka cyangwa gusebya Perezida wa Repubulika, bitabangamira ubwisanzure bw'itangazamakuru, ubwo kugaragaza ibitekerezo n'ubwo guhabwa amakuru biturutse ku mwihariko w'inshingano afite.

Umwanzuro rusange

[124] Urukiko rw'Ikirenga, ruhereye ku bisobanuro rwatanze kuri buri ngingo, rusanga ingingo ya 136, igika cya mbere, icya kabiri n'icya gatatu y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange itanyuranyije n'Itegeko Nshinga mu ngingo yaryo ya 18. Nkuko byasobanuwe, guhana ubusambanyi ntibibangamiye ubwisanzure bw'umuryango ahubwo bigamije kuwurengera.

[125] Nkuko byasobanuwe hejuru, ibika bibiri bya nyuma ntibitanga ubwisanzure busesuye kuwakorewe icyaha, bwo guhagarikisha urubanza aho rwaba rugeze hose, kuko Umucamanza ashobora kubyanga. Urukiko rusanga ibyo bika byombi bya nyuma byavaho, ahubwo igika cya gatatu kikuzuzwa, kikandikwa mu buryo bukurikira : "[...] Uwahemukiwe ashobora gusaba guhagarika ikurikirana ry'urubanza, aho rwaba rugeze hose, iyo yisubiyeho akareka ikirego cye. Kureka urubanza cyangwa irangiza ryarwo bigira ingaruka no kuwakoranye icyaha n'uregwa".

[126] Urukiko rusanga ingingo ya 138 n'ya 139 z'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange zitanyuranyije n'Itegeko Nshinga mu ngingo yaryo ya 18. Nkuko byasobanuwe, guhana ibyo byaha ntibibangamiye ubwisanzure bw'umuryango.

[127] Urukiko rusanga kandi ingingo ya 154 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, inyuranije n'ingingo ya 38 y'Itegeko Nshinga kuko ibangamiye ubwisanzure bw'itangazamakuru, ubwo kugaragaza ibitekerezo n'ubwo guhabwa amakuru.

²⁴ Aha hakwibutswa ko inshingano yo kugaragaza ibimenyetso mu manza nshinjabyaha itandukanye n'iyi mu manza mbonezamubano. Mu manza nshinjabyaha urugero ruri hejuru ku buryo nta gushidikanya kugaragara, mu manza mbonezamubano urwo rugero rukaba ari ukugaragaza ko ushyize ku munzani ugaragaza ko afite ibimenyetso bigaragaza ukuri kurusha undi ariwe utsinda (on a balance of probabilities).

²⁵ Organization for Security and Cooperation in Europe "Defamation and Insult Laws in the OSCE Region: A comparative Study" March 2017.

[128] Urukiko rusanga ingingo ya 233 y'Itegeko N°68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange inyuranije n'Itegeko Nshinga rya Repubulika y'u Rwanda, mu ngingo zaryo za 15, na 38. Ingingo ya 233, ntirengera abantu mu buryo bumwe kandi ibangamiye ubwisanzure bw'itangazamakuru, ubwo kugaragaza ibitekerezo n'ubwo guhabwa amakuru.

[129] Urukiko rusanga ingingo ya 236 y'Itegeko N°68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange itanyuraniye n'Itegeko Nshinga rya Repubulika y'u Rwanda, mu ngingo zaryo za 15 na 38 nkuko byaregowe, kuko inshingano za Perezida wa Repubulika zimuha umwihariko wo kuba hajyaho amategeko amurengeza ku buryo bwihariye. Ariko rusanga ibihano biteganijwe muri iyo ngingo biremereye bikaba bikwiye gusuzumwa n'inzeho zibishinzwe.

III. ICYEMEZO CY'URUKIKO

[130] Rwemeje ko ikirego cyatanzwe na Mugisha Richard gisaba kwemeza ko ingingo za 136, 138, 139, 154, 233, n'ya 236 z'Itegeko N°68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange zinyuranije n'Itegeko Nshinga rya Repubulika y'u Rwanda, mu ngingo zaryo za 15, 18 na 38, gifite ishingiro kuri bimwe.

[131] Rwemeje ko ingingo ya 136, igika cya mbere, icya kabiri n'icya gatatu y'Itegeko N°68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange itanyuranyije n'ingingo ya 18 y'Itegeko Nshinga.

[132] Rwemeje ko igika cya gatatu cy'ingingo ya 136 cyandikwa mu buryo bukurikira: "Uwahemukiwe ashobora gusaba guhagarika ikurikirana ry'urubanza, aho rwaba rugeze hose, iyo yisubiyeho akareka ikirego cye. Kureka urubanza cyangwa irangiza ryarwo bigira ingaruka no kuwakoranye icyaha n'uregwa".

[133] Rwemeje ko igika cya kane n'icya gatanu by'ingingo ya 136 y'Itegeko N°68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange bivanyweho.

[134] Rwemeje ko ingingo ya 138, n'ya 139 z'Itegeko N°68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange zitanyuranyije n'ingingo ya 18 y'Itegeko Nshinga.

[135] Rwemeje ko ingingo ya 154 y'Itegeko N°68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, inyuranije n'ingingo ya 38 y'Itegeko Nshinga, bityo iyo ngingo ikaba ivanyweho.

[136] Rwemeje ko ingingo ya 233 y'Itegeko N°68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange inyuranije n'ingingo ya 15 n'ya 38 y'Itegeko Nshinga, bityo iyo ngingo ikaba ivanyweho.

[137] Rwemeje ko ingingo ya 236 y'Itegeko N°68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange itanyuraniye n'ingingo ya 15 n'ya 38 y'Itegeko Nshinga.

[138] Rutegetse ko uru rubanza rutangazwa mu Igazeti ya Leta ya Repubulika y'u Rwanda.